SUPREME COURT OF THE UNITED STATES.

No. 299.

DAVID GIBSON, FOR HIMSELF, AND THOMAS G. GAYLORD, BENJAMIN B. GAYLORD, JARED B. GREEN, CHARLES S. GREEN, WILLIAM ELDEN, AND WILLIAM CALCORD, PARTNERS, AS GAYLORD, SON AND COMPANY, APPELLANTS,

vs.

AMERICUS WARDEN AND AUGUSTUS S. LUDLOW.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF OHIO.

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1 At a circuit court of the United States, within and for the sixth judicial circuit and southern district of Ohio, begun and held at the court-house, in the city of Cincinnati, on the first Tuesday of April, being the fifth day of that month, in the year of our Lord one thousand eight hundred and seventy, and of the independence of the United States of America the ninety-fourth:

Present, the Honorable Noah H. Swayne, judge of said court—

Among the proceedings had were the following, to wit:

AMERICUS WARDEN AND AUGUSTUS S. LUDLOW, residents of the city of Cincinnati, and citizens of the State of Ohio,

vs.

THOMAS G. GAYLORD, BENJAMIN B. GAYLORD, Jared B. Green, Charles S. Green, all of the district aforesaid, William Elden, of Newport, in the State of Kentucky, and William Colcord, of St. Louis, in the State of Missouri, partners under the style of Gaylord, Son and Company; David Gibson, Charles L. Gano, and Jane Gano, his wife, Daniel W. Woodmansee, and Mary C. Woodmansee, his wife, Chester M. Poor, and Louisa H. Poor, his wife, and Charles G. King, William D. King, and Annie M. King, infants, and Daniel W. Woodmansee, their guardian, all of the district aforesaid; and James W. K. Lemon, and Alice M. Lemon, his wife, of the State of Indiana; Charles L. Gano, Charles Harkness, and Thomas L. King, executors of the 2 estate of Anthony Harkness, deceased, Mary Harkness, Thomas Dodsworth; and Hezekiah Kierstead and Louis Hoffman, partners under the style of Kierstead and Hoffman, all of the district aforesaid; William Spiegel, of Newport, in the State of Kentucky, and Thomas McIlvain, of the city of Cincinnati, State of Ohio, partners under the style of McIlvain & Spiegel; Thomas Phillips, of the city last mentioned, and George Phillips, of Covington, in the State of Kentucky, partners under the style of Phillips and Son; William Means, Thomas W. Means, John Kyle, George Slimer, R. D. Simms, Mrs. S. B. Hempstead, all of the district aforesaid, and John Means, of the State of Kentucky, partners under the style of Means, Kyle & Co.

1081.—In equity.

Be it remembered that, heretofore, to wit, on the twenty-first day of December, in the year of our Lord one thousand eight hundred and sixty-eight, came the complainants, by Egly and Warden, and William Stanton, esq'rs, their solicitors, and filed in the clerk's office of said court, their certain bill herein, which said bill is in the words and figures following, to wit:

Bill.

To the honorable the judges of the circuit court of the southern district of Ohio, sitting in equity: assignees mtg

Americus Warden and Augustus S. Ludlow, residents of the city of Cincinnati, and citizens of the State of Ohio, bring this their bill against Thomas G. Gaylord, Benjamin B. Gaylord, Jared B. Green, Charles S. Green, all of the district aforesaid, William Elden, of Newport, in the State of Kentucky, and William Colcord, of St.
3 Louis, in the State of Missouri, partners under the style of Gaylord, Son and Company; David Gibson, Charles L. Gano, and Jane Gano, his wife, Daniel W. Woodmansee, and Mary C. Woodmansee, his wife, Chester M. Poor and Louisa H. Poor, his wife, and Charles G. King, William D. King, and Annie M. King, infants, and Daniel W. Woodmansee, their guardian, all of the district aforesaid; and James W. K. Lemon, and Alice M. Lemon, his wife, of the State of Indiana; Charles L. Gano, Charles Harkness, and Thomas L. King, executors of the estate of Anthony Harkness, deceased, Mary Harkness, Thomas Dodsworth; and Hezekiah Kierstead and Louis Hoffman, partners under the style of Kierstead and Hoffman, all of the district aforesaid; William Spiegel, of Newport, in the State of Kentucky, and Thomas McIlvain, of the city of Cincinnati, State of Ohio, partners under the style of McIlvain & Spiegel; Thomas Phillips, of the city last mentioned, and George Phillips, of Covington, in the State of Kentucky, partners under the style of Phillips and Son; William Means, Thomas W. Means, John Kyle, George Slimer, R. D. Simms, Mrs. S. B. Hempstead, all of the district aforesaid, and John Means, of the State of Kentucky, partners under the style of Means, Kyle and Co.

And thereupon your orators complain and say that by indenture dated on the thirty-first (31st) day of January, in the year eighteen hundred and fifty-two, (1852,) Anthony Harkness, in consideration of the rents, covenants, and provisoes in said indenture reserved, did demise and let unto Robert Moore and John G. Richardson, partners, for the term of twenty years from the date aforesaid, certain lots of land therein described, situate in the said city of Cincinnati; that in
4 consideration of said letting the said Robert Moore and John G. Richardson covenanted to pay to the said Anthony Harkness, his heirs and assigns, the yearly rent of six thousand dollars ($6,000 00) payable quarter-yearly in equal instalments of fifteen hundred dollars ($1,500 00) each, on the first day of May, August, November, and February, every year, and also to pay the ground rent on a portion of the premises demised, amounting to the sum of eight hundred dollars ($800 00) per annum, (in addition to said annual rent of six thousand dollars,) and also to pay all taxes, levies, and assessments which might be lawfully levied upon said premises; and it was also in said indenture covenanted and agreed by and between the said lessor, Anthony Harkness, and the said lessees, Moore & Richardson, that an inventory and assessment of the value of all the buildings on said premises should forthwith be made and endorsed on said indenture, and it was agreed between said lessor and lessees that if at the end or sooner termination of said lease, the buildings upon said premises should not be equal to their value as assessed and endorsed on said indenture as aforesaid, the said lessees should pay the difference to said Anthony Harkness, his heirs or assigns, and that if at the end or other sooner determination of said term the value of the buildings on said premises should be greater than their value so assessed and endorsed on said indenture, he,

the said Anthony Harkness, his heirs or assigns, would pay the difference to the said lessees; and for the due payment and performance of all rents, taxes, articles, and conditions in said indenture, stipulated to be paid and observed by the said lessees, the said lessor, his heirs and assigns, reserved the first lien on said demised premises, and all the additions and improvements thereupon, preferable over all other liens. And it was further provided in said indenture that if said lessees should refuse or fail to pay said installments of rent, or to observe and perform all the terms and articles of said lease; or if said lessees should in any manner assign, under lease, or part with the possession or occupation of said premises or any part thereof, except one of said partners, Moore and Richardson, to the other; or if said demised premises, or any part thereof, should at any time during said term be attached, levied upon, taken, or molested by any process of law against said parties of the second part, then said lessor, his heirs or assigns, might reënter upon said premises and avoid said lease. And your orators further say that the buildings on said demised premises were valued and assessed at the date of the lease aforesaid, at the sum of seventeen thousand three hundred and twenty-seven dollars, ($17,327 00,) and that said valuation and assessment was forthwith endorsed upon the indenture aforesaid, as therein provided. And your orators further say that, after the making of the lease aforesaid, buildings and improvements were erected and made upon the premises demised thereby, and that the value of the buildings now standing on the said demised premises is now greater than the sum last above-mentioned.

And your orators further say that, on the thirteenth day of February, in the year eighteen hundred and sixty-five, (1865,) the said John G. Richardson did assign to the said Robert Moore, all the interest of the said Richardson, in, under, and by virtue of the indenture aforesaid; and that the said Robert Moore thereby became the sole owner of all the interest and estate of the lessees under and by virtue of the indenture aforesaid.

And your orators further say that, after the assignment of the interest of the said John G. Richardson to the said Robert Moore, as aforesaid, the said Robert Moore associated with him his sons Arthur G. Moore, Hamilton Moore, Frederick R. Moore, and Augustus Moore, as partners, under the firm and style of Robert Moore and Sons, and that said partners under said style, carried on their business of the manufacture of locomotive and other engines and heavy machinery, until the twenty-first day of March, in the year eighteen hundred and sixty-eight, (1868,) when said firm made an assignment of all their assets as hereinafter stated.

Your orators further say that, on or about the eighth (8th) day of March, in the year last above mentioned, the said firm of Robert Moore and Sons did, by a certain written instrument, mortgage, or attempt to morgage, to defendant David Gibson and his assigns, all the machinery, engines, boilers, machine tools, line shafting, patterns, and all office furniture owned and used by said Robert Moore and Sons, in their establishment, located on the premises demised to Moore and Richardson, as above set forth, for the alleged purpose of securing the payment of a note for six thousand dollars, ($6,000 00,) made by the said Robert Moore & Sons, and payable sixty days after the date last above mentioned to the order of the said David Gibson; and the said instrument was, by the said David Gibson, filed in the office of the recorder

of Hamilton County, in the State of Ohio, at 12 o'clock m. on the eighteenth (18th) day of March, in the year last above mentioned.

And your orators further say that, on or about the seventeenth day of the said month of March, 1868, the said firm of Robert Moore and Sons, by another certain written instrument, did also mortgage, or attempt to mortgage, all their machinery, engines, boilers, machine tools, line shafting, patterns, and office furniture above-mentioned, to
7 the defendants Thomas G. Gaylord, Benjamin B. Gaylord, William Elden, Jared B. Green, Charles S. Green, and William Colcord, partners under the firm and style of Gaylord, Son & Co., for the alleged purpose of securing to the said Gaylord, Son & Co., a certain debt due, or to become due, to them from the said Robert Moore & Sons, and also of securing the said Gaylord, Son & Co., from loss by endorsing the note or notes of said Robert Moore and Sons, the amount of said debt and said endorsement being stated in said instrument at the sum of seventeen thousand four hundred dollars, ($17,400 00;) and that the said instrument last above mentioned was filed in the office of the recorder of the county aforesaid on the eighteenth (18th) day of said month of March, 1868, at twenty-five (25) minutes after five (5) o'clock, p. m.

Your orators further say that, on the twenty-first (21st) day of March, in the year eighteen hundred and sixty-eight, (1868,) the said Robert Moore, Arthur G. Moore, Hamilton Moore, Frederick R. Moore, and Augustus Moore, partners as aforesaid, under the style of Robert Moore and Sons, were still in possession of all the property mentioned and described in the said alleged chattel mortgages to said David Gibson, and to said Gaylord, Son & Co., as above set forth, and by deed of assignment of the date last aforesaid, reciting that said Robert Moore and Sons were at that date indebted to various persons in divers sums of money, which they were at that time unable to pay, and that they were willing to assign all their property for the benefit of their creditors, did grant, assign, and transfer to said Augustus S. Ludlow and Americus Warden, all the goods, chattles, wares, bills, notes, bonds, book-accounts, claims, demands, judgments, choses in action, evidences of debt, and property of every deseription of the said assignors not exempt by law from execution, and also the books of account of
8 said assignors and all papers relating to their business dealings or property, to have and to hold the same in trust, to take possession of the same, and with all reasonable diligence to sell and dispose of the same, as the probate court of Hamilton County, Ohio, might direct, and convert the same into money, and to collect all the said debts, claims, and demands, and with and out of the proceeds of such sales and collections, after first deducting the expenses of the same and all the expenses of executing the trusts created by said deed of assignment, and such compensation as said probate court might allow said assignees to pay and discharge in full, if the net proceeds should be sufficient for the purpose, all and singular, the debts due and owing to any and all persons by the said assignors; and if the said proceeds should not be sufficient for the payment of said debts in full as aforesaid, then to apply the same so far as they would extend to the payment of said debts, without distinction or preference. Said deed of assignment was signed and sealed by each of the said partners, members of the said firm of Robert Moore & Sons, in the presence of two witnesses, but was not acknowledged by them, nor either of them, before any officer or person authorized to take the acknowledgement of deeds under the laws of the State of Ohio, and was not recorded in the

office of the recorder of deeds, of the county of Hamilton, in the State of Ohio.

Your orators further say that the greater part of the property assigned to the said Augustus S. Ludlow and Americus Warden, by the deed of assignment aforesaid, were in, upon, and about the premises aforesaid, held by the said Robert Moore, as leasehold under the lease aforesaid, and that the said assignees, under the deed of assignment above mentioned, did, in the execution and discharge of the
9 trusts devolved upon them under said assignment, enter upon said premises and take possession of the goods, chattles, and property assigned to them as aforesaid, including the goods and chattles described and mentioned in the instruments aforesaid, purporting to be mortgages to the said David Gibson, and to the said Gaylord, Son & Co.

And your orators, further say that, the greater part of the goods and chattles aforesaid, consisted of tools, boilers, engines, lathes, cranes, patterns, and other ponderous and bulky machinery and apparatus for the carrying on of an extensive establishment for the manufacture of locomotive and other engines and machinery, and of a large quantity of scrap iron scattered through and about said premises, and that by reason of the size, weight, and quantity thereof, the said assignees were unable to collect and sell and remove all said property off the premises aforesaid before the fifteenth day of September, in the year eighteen hundred and sixty-eight, (1868,) and that a portion of said property still remains in and upon the premises aforesaid.

Your orators further say that the leasehold interest in the premises aforesaid, under the lease from Anthony Harkness aforesaid, was never assigned by the said Robert Moore to the said firm of Robert Moore and Sons, and was not assigned to the assignees aforesaid by the deed of assignment aforesaid, and that the same was, up to the said fifteenth day of September, 1868, the property of the said Robert Moore, exclusively.

Your orators further say that the said Anthony Harkness deceased on the year eighteen hundred and , and that on or after his decease all the interest and title of the said Anthony Harkness in and to the real estate aforesaid, passed to and became vested in de-
10 fendants above named, Charles L. Gano, and Jane, his wife, Daniel W. Woodmansee, and Mary C., his wife, Chester M. Poor and Louisa H., his wife, and Charles G. King, William D. King, and Annie M. King, infants, and James W. K. Lemon, and Alice M., his wife, all of whom, (the said infants suing by their guardian and next friend, the said Daniel W. Woodmansee,) filed their petition in the district court of the southern district of the State of Ohio, on the said fifteenth day of September, in the year eighteen hundred and sixty-eight, (1868,) setting forth that they were jointly creditors of the said firm of Robert Moore and Sons to the amount of over nine thousand dollars, ($9,000 00,) which they alleged to be due them as rent of the premises aforesaid, and that said Robert Moore and Sons, by the assignment aforesaid to the said Augustus S. Ludlow and Americus Warden, as well as by the alleged mortgages aforesaid to David Gibson, and to Gaylord, Son & Co., had committed acts of bankruptcy, and praying that the said Robert Moore & others aforesaid, partners under the style of Robert Moore and Sons, be declared bankrupt, and that a warrant should be issued to take possession of their estate, that the same might be distributed according to the act of Congress approved March 2, 1867, entitled "An act to establish a uniform system of bank-

ruptcy throughout the United States," and that such further proceedings might be had as the law in such cases prescribes; and your orators further say, that upon the hearing of said petition the said Robert Moore, Arthur G. Moore, Hamilton Moore, Frederick R. Moore, and Augustus Moore, partners under the style of Robert Moore & Sons, were adjudged bankrupts, and thereupon such proceedings were had as are prescribed in the act of Congress aforesaid, and the acts amendatory thereto, and that by virtue of such proceedings, your orators the said Americus Warden, and the said Augustus S. Ludlow were,
11 at a meeting of the creditors of said Robert Moore and Sons, unanimously chosen assignees of the estate of said Robert Moore & Sons; and within five days after being so chosen as aforesaid, accepted, in writing, the trust as such assignees in bankruptcy, and afterwards gave bond and were qualified as such assignees, and received from the proper register in bankruptcy an instrument under his hand, assigning and conveying to your orators, as such assignees in bankruptcy, all the estate, real and personal, of the bankrupts aforesaid, with all the deeds, books, and papers relating thereto, and thereupon became vested, as such assignees, with the title to all the property and estate of such bankrupts, except such as is excepted from the operation of such assignment by the provisions of the act of Congress aforesaid. But your orators say they have not yet elected to accept the leasehold estate of the said Robert Moore under the lease aforesaid, as part of the assets of said bankrupts; that, by reason of the large rents reserved in said lease, your orators are of the opinion that said leasehold estate may be of no value, and that its acceptance by them may be detrimental to the interests of the estate of said bankrupts; and they say furthermore, that by reason of the covenants of said lease, the said Charles L. Gano, and Jane Gano, his wife, Daniel W. Woodmansee, and Mary C., his wife, Chester M. Poor, and Louis H., his wife, Charles G. King, William D. King, Annie M. King, and James W. K. Lemon, and Alice M., his wife, are entitled to a lien on said leasehold estate for rents due thereon; and further, that by reason of the non-payment of said rents, as well as by reason of other terms and provisos of said lease, they are entitled to enter upon said premises and avoid said lease.

Your orators further say that of the assets of said bankrupts
12 which came into the hands of your orators as assignees in bankruptcy as aforesaid, was a certain amount of cash, to wit, sixteen thousand six hundred seventy-six $\frac{70}{100}$ dollars, ($16,676 70,) and that the remainder of said assets consisted of certain property, real and personal, of the estimated value of
dollars, ($,) and that after all said property shall have been converted into cash, the total amount of the fund in the hands of your orators as assignees in bankruptcy as aforesaid, will not exceed twenty thousand dollars, ($20,000 00,) and that a great part, to wit, seventeen thousand three hundred $\frac{05}{100}$ dollars ($17,300 05) of said fund, will have resulted from the sale of the chattels mortgaged, or alleged to have been mortgaged to the said defendants, David Gibson and Gaylord, Sons & Co., as aforesaid, and that the liabilities of said firm of Robert Moore and Sons amount to the sum of eighty thousand one hundred and twenty-six $\frac{58}{100}$ dollars, ($80,126 58,) and that the total amount of the cash proceeds of said estate will not be sufficient to discharge said liabilities.

Your orators further say that, of the defendants above named, the said Mary Harkness, the said Thomas Dodsworth, the said Kierstead & Hoffman, the said Phillips & Son, the said Means, Kyle & Co., and the

said executors of Anthony Harkness, deceased, are general creditors of the estate of the said Robert Moore and Sons, and neither have nor claim any lien on any of the assets of said estate nor any preference over the creditors; that the general creditors of said estate are very numerous, and cannot, without great inconvenience and delay, be all brought before this court, and that the defendants above-mentioned represent all the adverse interests in this suit.

13 Your orators further say that, by reason of the premises, divers conflicting claims have been made against the fund and assets in their hands, as assignees in bankruptcy as aforesaid, and that divers facts are withheld from them, without which they cannot rightly discharge the trusts assumed by them. The creditors of said Robert Moore and Sons, to whom mortgages were given as aforesaid, claim the apparent priority and lien created, or attempted to be created, by said mortgage; and the creditors, who have no such apparent priority or lien, claim that the said mortgages were not effectual, in equity and under the laws of bankruptcy, to create a real lien or priority. Your orators are also given to understand that the said mortgage creditors deny the efficacy of the aforesaid proceedings in bankruptcy to transfer the distribution of the fund aforesaid from the State court aforesaid to the said district court; but your orators cannot state precisely the grounds on which that denial is supposed to rest. Your orators are also given to understand that the executors of Harkness aforesaid will insist that the assignees of Moore & Sons are liable to them as for rent of the premises aforesaid in a large sum of money; while the other creditors deny said liability.

To the end, therefore, that the said defendants may, if they can, show why your orators should not have the relief hereby prayed, and may, upon their several and respective corporal oaths, and according to the best and utmost of their several and respective knowledge, remembrance, information, and belief, full, true, direct, and perfect answer make to such of the several interrogatories hereinafter numbered and set forth, as by the note hereunder written they are, respectively, required to answer; that is to say:

14 1. Whether it is not a fact that Anthony Harkness demised to said Robert Moore and John G. Richardson certain real estate, upon the terms and conditions above stated?

2. Whether it is not a fact that the said Robert Moore did, in the year 1865, by virtue of an assignment from said John G. Richardson, become the sole owner of all the interest and estate of the lessees, under and by virtue of said lease from Anthony Harkness?

3. Whether it is not a fact that the leasehold interest in said real estate was never assigned by the said Robert Moore to the said firm of Robert Moore and Sons?

4. Whether it is not a fact that the said leasehold estate was not assigned to Augustus S. Ludlow and Americus Warden by the deed of assignment aforesaid, dated the 21st day of March, 1868?

5. Whether it is not a fact that said leasehold estate was, up to the 15th day of September, 1868, the property of the said Robert Moore, exclusively?

6. Whether it is not a fact that the assignees in bankruptcy aforesaid have not elected to accept the leasehold estate of the said Robert Moore, under the lease aforesaid, as part of the assets of said bankrupt?

7. Whether it is not a fact that said Gano and others claim that they are entitled to priority of payment of the rents accruing under said

lease, as expenses of said assignment; and if yea, from what time and to what amount are said rents so claimed?

8. Whether it is not claimed by said Mary Harkness, Thomas Dodsworth, and other general creditors claiming no lien or priority, that said Gano and others have no claim for rent against the estate of the firm of Robert Moore & Sons?

9. Whether it is not claimed by the general creditors aforesaid that the said Gano & others cannot be admitted as creditors, except for the balance of their claim, after deducting the value of the leasehold estate aforesaid, to be ascertained by a sale of the same in such manner as the court may direct?

10. Whether it is not claimed by the defendant David Gibson that the instrument aforesaid, dated on the 8th day of March, and filed with the recorder aforesaid, on the 18th day of March, at 12 o'clock m., was the first and paramount lien on the chattles described therein, and that said David Gibson is entitled to priority of payment out of the proceeds of the sale of such chattels before all other creditors?

11. Whether it is not claimed by the defendants, Gaylord, Son & Co., that the instrument aforesaid, dated on the 8th day of March, and filed with the recorder aforesaid on the 18th day of March, at 12 o'clock m., was the first and paramount lien on the chattels described therein, and that said Gaylord, Son & Co., are entitled to priority of payment out of the proceeds of the sale of such chattles before all other creditors?

12. Whether it is not claimed by the general creditors aforesaid that the said alleged mortgages to the said defendants, David Gibson and Gaylord, Son & Co., are invalid?

13. Whether it is not claimed by the said general creditors that some of the creditors aforesaid are entitled to priority of payment out of the funds aforesaid, but that each and all must share pro rata, after the payment of the expenses of the trust?

14. Whether it is not a fact that the plaintiffs were appointed and qualified as assignees in bankruptcy as aforesaid?

15. Whether it is not a fact that the greater part of the fund in the hands of the assignees in bankruptcy is and will be the result of the sale of the machinery and chattels mentioned and described in the said alleged mortgages to David Gibson and Gaylord, Son & Co.

16. Whether it is not a fact that the total fund in the hands of said assignees in bankruptcy will not be sufficient to pay all the claims and liabilities of said bankrupt estate?

Your orators pray that said defendants may be compelled to interplead and settle and adjust their several claims to the funds aforesaid, and for the aid and direction of the court in the execution of the trusts of said assignment, and for such other and further relief as the nature of the case may require.

Therefore will your honors grant unto your orators the writ of subpœna, issuing out of and under the seal of this court, to be directed to said defendants Thomas G. Gaylord, Benjamin B. Gaylord, Jared B. Green, Charles S. Green, William Elden, and William Colcord, partners under the style of Gaylord, Son & Co.; David Gibson, Charles L. Gano, and Jane Gano, his wife, Daniel W. Woodmansee, and Mary C. Woodmansee, his wife, Chester M. Poor, and Louisa H. Poor, his wife, and to Charles G. King, William D. King, and Annie M. King, who are infants, and Daniel W. Woodmansee, their guardian; to James W. K. Lemon, and Alice M. Lemon, his wife, and Charles L. Gano, Charles Harkness, and Thomas L. King, executors of the last will and

testament of Anthony Harkness, deceased; Mary Harkness, widow of the said Anthony Harkness; Thomas Dodsworth, and Hezekiah Kierstead, and Louis Hoffman, partners under the style of Kierstead and Hoffman; William Spiegel and Thomas McIlvain, partners under the style of McIlvain & Spiegel; Thomas Phillips and George Phillips, partners under the style of Phillips and Son; William Means, Thomas W. Means, John Means, John Kyle, George Slimer, R. D. Simms, and Mrs. S. B. Hempstead, partners under the style of Means, Kyle
17 & Co., commanding them, and each of them, by a certain day, and under a certain penalty therein inserted, to appear before your honors in the circuit court of the United States for the southern district of Ohio, and then and there answer the premises, and abide the order and decree of the court.

EGLY & WARDEN, &
WILLIAM STANTON,
Solicitors for Pl'ffs.

And thereupon, on said twenty-first day of December, the day on which said bill was filed, and in the year last aforesaid there was issued out of the clerk's office of the court aforesaid the writ of subpœna herein, which said writ is in the words and figures following, to wit:

Subpœna.

UNITED STATES OF AMERICA,
Southern District of Ohio, ss:

The President of the United States of America, to the marshal of the southern district of Ohio, greeting:

You are hereby commanded to summon Thomas G. Gaylord, Benjamin B. Gaylord, Jared B. Green, Charles S. Green, David Gibson, Charles L. Gano, and Jane Gano, his wife, Daniel W. Woodmansee, and Mary C. Woodmansee, his wife, Chester M. Poor, and Louisa H. Poor, his wife, and Charles G. King, William D. King, and Annie M. King, infants, and Daniel W. Woodmansee, their guardian; Charles L. Gano, Charles Harkness, and Thomas L King, executors of the estate of Anthony Harkness, deceased; Mary Harkness, Thomas Dodsworth; and Hezekiah Kierstead and Louis Hoffman, partners under the style of Kierstead and Hoffman, and Thomas McIlvain, and Thomas Phillips and William Means, Thomas W. Means, John Kyle, George Slimer, R. D. Simms and Mrs. S. B. Hempstead, citizens of and resident in the State of Ohio. if they be found in your district, to be and appear
18 in the circuit court of the United States for the southern district of Ohio aforesaid, at Cincinnati, on the first Monday, in February next, to answer a certain bill in chancery, filed and exhibited in said court, against them by Americus Warden and Augustus S. Ludlow, citizens of and resident in the State of Ohio.

Hereof you are not to fail under the penalty of the law thence ensuing, and have you then and there this writ.

Witness the Honorable Salmon P. Chase, Chief Justice of the United States, this 21st day of December, A. D., 1868, and in the 93d year of the independence of the United States of America.

[SEAL.] Attest: JOHN McLEAN, *Clerk.*

MEMORANDUM.—The said defendants are required to enter their appearance in this suit in the clerk's office of said court, on or before the

first Monday of February, 1868; otherwise the said bill may be taken pro confesso.

JOHN McLEAN, *Clerk.*

And afterwards, to wit, on the thirtieth day of January, in the year of our Lord one thousand eight hundred and sixty-nine, came the said marshal to whom said writ of subpœna was in form aforesaid directed, and returned the same into the clerk's office of said court, with his proceedings endorsed thereon in the words and figures following, to wit:

Marshal's return.

Served this writ on the within-named Thomas W. Means, Mrs. S. B. Hempstead, and William Means personally by copies.
Jan'y 6th, 1869.

A. HICKENLOOPER, JR.,
U. S. M. S. D. O.,
By JNO. W. EARLES, *Dep'ty.*

19 Served the within-named Thomas L. King, executor, &c., personally, by copy, on the 16th day of January, 1869, and served the within-named Charles G. King, William D. King, and Annie M. King, on the 16th day of January, 1869, by handing to their father, the Thomas L. King aforesaid, a certified copy of this writ for each of them.

A. HICKENLOOPER, JR., *Marshal*,
By J. H. LONG, *Deputy.*

Served the within-named Chester M. Poor, Louisa H. Poor, and Mary Harkness each personally, by copy, this 29th day Jan'y, 1869.

A. HICKENLOOPER, JR.,
U. S. Marshal,
By W'M KETTELER, *Deputy.*

CINCINNATI, *Jan. 30th*, 1869.

Served the within-named Louis A. Hoffman, Tho's McIlvaine, Geo. Slimer, David Gibson, Cha's Harkness, Tho's Dodsworth, and J. B. Green, all personally, by copy, and John Kyle, Thomas G. Gaylord, and H. Kierstead at residence by copy. R. D. Simms not found. Tho's Phillips at residence. Served the above 25th Jan'y, 1869.

A. HICKENLOOPER, *U. S. M.*,
By C. T. VAN SICKLEN, *Deputy.*

PORTSMOUTH, OHIO, *Jan'y 13th*, '69.

Served Benjamin B. Gaylord and Charles S. Green each personally, by copy, this day.

A. HICKENLOOPER, JR.,
U. S. Marshal, S. D. O.,
By W'M B. WILLIAMS, *Dep'ty.*

URBANA, *Jan'y 20th*, '69.

Served 2 copies of this writ upon Daniel W. Woodmansee personally. Served Mary C. Woodmansee at residence this day.

A. HICKENLOOPER, JR.,
U. S. Marshal,
By D. H. HOVEY, *Deputy.*

MORGAN CO., OHIO, *Jan'y 18th*, 1869.

The within-named Cha's L. and Jane Gano "not found."

A. HICKENLOOPER, JR.,
U. S. Marshal, S. D. O.,
By D. H. SHEETS, *Dep'ty.*

20 JAN'Y 30TH, '69.

Rec'd this writ Jan'y 2nd, '69, at 3 30 p. m., and return the same this day.

A. HICKENLOOPER, JR.,
U. S. Marshal,
By D. S. SMITH, *Deputy.*

And afterwards, to wit, on the first day of February, in the year last aforesaid, came Charles L. Gano, and Jane, his wife, by King, Thompson & Avery, esquires, their solicitors, and filed in the clerk's office of said court their answer and cross-bill herein; which said answer and cross-bill is in the words and figures following, to wit:

Answer & cross-bill of C. L. Gano & wife.

Circuit court of the United States, southern district of Ohio. In chancery.

The several answer of Charles L. Gano, and Jane, his wife, defendants, among others, to the bill filed by Americus Warden and Augustus S. Ludlow, complainants.

These defendants, reserving all right of exception to said bill of complaint, for answer thereto, say*s* it is true that Anthony Harkness made the demise and agreement to and with Robert Moore and John G. Richardson, as partners, which is set forth in said bill, and upon the terms therein stated, and afterwards, in the month of May, 1858, died, leaving a last will, which was duly proven and recorded in the probate court of Hamilton County, Ohio, whereby he devised and gave to this defendant, Jane Gano, one undivided half of all the said premises so demised, and the rents thereof, for the term of her life; but whether the buildings on said premises are now of greater value than the appraisement mentioned in the bill, they have no knowledge, but are informed that such is not the fact, and they therefore deny said
21 allegation. They are informed and believe that the said Richardson did assign all his interest in said lease and agreement, as well as the machinery, engines, boilers, tools, and chattels mentioned in the bill, to the said Robert Moore. And they aver that the said partnership or firm of Robert Moore and Sons, named in the bill, thereupon immediately, and under and by virtue of said demise and assignment, entered and took possession of all said premises, and continued to occupy, use, and enjoy the said premises in conducting and carrying on their business mentioned in the bill, from the time of said assignment until the day of March, 1868, and as tenants of these defendants paid them the rents reserved in said lease for said undivided one-half from the time of said assignment until the 1st day of August, 1867, and likewise paid the ground rent of $800, and taxes, as reserved in said lease. And these defendants, further answering, aver that the plaintiff, having full knowledge of said lease, and the rents and terms therein reserved, and of the said tenancy of Robert Moore and

Sons, so created and existing, did, on said day of March, 1868, under and by virtue of the assignment made to them by said firm of Robert Moore and Sons, as mentioned in the bill, enter into and take possession of all said leasehold premises, together with the said machinery, engines, boilers, tools, and chattels, contained thereon, and have ever since held, occupied, and used the same as the assignees of said Robert Moore and Sons. And these defendants therefore deny any and all statements in the bill alleging that said leasehold premises were not assigned by said Robert Moore to the said firm of Robert Moore and Sons, and were not assigned by said Robert Moore and Sons to the plaintiffs, nor accepted by the plaintiffs, and that the plaintiffs,
22 as such assignees, are not liable for the rents, use, and occupation of said premises. These defendants, on the contrary, claim and will insist that they are justly entitled to recover of the plaintiffs out of the funds which have come into their hands as such assignees, the full amount of the rent and taxes reserved by said lease, as to their one-half, which have accrued from the said day of March, during said occupation of the plaintiffs, and so long as the same shall continue. And they aver that, besides the rent so due from the plaintiffs at the rate of $6,000 per annum, the plaintiffs have been compelled to pay one-half of said ground rent at the rate of $800 per annum, and taxes assessed upon said premises to the amount of two thousand and eighty dollars $\frac{59}{100}$, ($2,080 59,) for all which they pray this court to authorize and order the plaintiffs to pay and reimburse them as expenses justly and necessarily incurred in discharge of their trust.

These defendants, further answering, deny that the pretended mortgages mentioned in the bill as having been executed by said Robert Moore and Sons to the defendants David Gibson, and Gaylord, Son & Co., were or are of any force or validity whatever, and, on the contrary, aver that neither of said pretended mortgages was executed or filed in lawful manner and form, and the said pretended mortgages were given by said Robert Moore and Sons within six months before the filing of the petition against them by these defendants, and others, praying that they be declared bankrupts, which is mentioned in the bill; and that at the time of the pretended making of said mortgages the said Robert Moore and Sons were wholly insolvent, and intended thereby to defeat, impair, or evade the act to establish a uniform system of bankruptcy throughout the United States, passed by Congress and approved March 2, 1867; and the said David Gibson and Gaylord, Son
23 and Co., respectively had reasonable cause to believe that they were insolvent then, or to be acting in contemplation of insolvency, and that said pretended mortgages, and each of them, were given with a view to prevent other creditors of said Robert Moore and Sons from being paid or secured equally with the said David Gibson and Gaylord, Son and Co., and with a view to defeat and impair, hinder, or evade the provisions and object of said act; and defendants therefore insist that said pretended mortgages, if any such were made, were and are null and void, and they pray judgment thereon accordingly.

These defendants further answering, admit that the said Robert Moore and Sons did, on or about the 21st of March, 1868, execute to the plaintiffs the deed of assignment set forth in the bill; but they aver that at the time when the same was made the said Moore and Sons were wholly insolvent, and that the said assignment was with a view to prevent the property so assigned from coming to their assignee in bankruptcy, and to prevent the same from being distributed under the act of Congress aforesaid, and to defeat the object of said act, and

impair, hinder, and evade the provisions of said act, and was made within six months next before the filing of the petition aforesaid by these defendants and others against said Robert Moore and Sons, praying that they be adjudged to be bankrupts; and that said assignment was and is wholly null and void, except in this, that, after the filing of said petition last mentioned by these defendants and others, and before the sale of the property aforesaid by the plaintiffs, claiming to be acting under said assignment, these defendants agreed and consented that the plaintiffs might proceed to sell the said property and hold the
24 proceeds subject in all respects to such lawful decision and order as might or should be made by the district court of the United States in bankruptcy in the proceeding under the petition aforesaid, and should account for and dispose of the same accordingly, to all which the plaintiffs consented and agreed, and under said agreement proceeded to sell and dispose of the property so assigned to them.

These defendants, further answering as to the allegations in the bill that the plaintiffs, as the assignees of said Robert Moore and Sons, have received $16,676 70 only in cash, and that the sum of $17,300 05 only resulted from the sale of the chattels so assigned to the plaintiffs, and that the total amount of the funds in their hands will not exceed $20,000, say that they have no knowledge as to said matters or either of them; and as the plaintiffs have not filed or exhibited any report or account of their sales or proceedings, these defendants cannot admit said allegations, or either of them; but, on the contrary, have been informed and believed that the plaintiffs had collected and received a much larger amount than above mentioned from the property so assigned and delivered to them, and they therefore claim that a more full, certain, and particular account of the same be rendered by the plaintiffs at the hearing.

These defendants, further answering, admit, as alleged in the bill, that they have notified the plaintiffs that they claim and will insist that the plaintiffs, as assignees aforesaid, are liable to them for the rents and taxes of said premises, *are* above more particularly stated, and that they have demanded of the plaintiffs payment of the same.

These defendants, for answer to the interrogatories propounded in the bill, say:

To the first, they answer that said Anthony Harkness did de-
25 mise said premises upon the terms and conditions, among others, which are stated in the bill.

To the second, they answer that said Richardson did, in form, make an assignment of said lease to said Robert Moore, but whether or not said Moore thereby became the sole owner of all the interest and estate of the lessees under said lease they know not, and are not informed, save by the plaintiffs' said bill, and cannot set forth as to their belief or otherwise.

3. To the third, they answer that it is not a fact, as they are informed and believe, that said leasehold interest was never assigned by said Robert Moore to said Robert Moore and Sons.

4. To the fourth, they answer that they know not, nor are they informed, save by the plaintiffs' said bill, whether or not said leasehold estate was assigned to the plaintiffs by the said deed, and they cannot set forth as to their belief or otherwise.

5. To the fifth, they answer that it is not a fact, as they are informed and believe, that said leasehold estate was, until September 15th, 1868, the property of said Robert Moore exclusively.

6. To the sixth, they answer that it is not a fact, as they are informed

and believe, that the plaintiffs, as such assignees, have not elected to accept the said leasehold.

7. To the seventh, they answer that it is a fact that they claim a priority of payment for their one-half of the rents and taxes accruing under said lease as expenses of said assignment from March 21st, 1868, and at the rate of $6,000 per annum, as rent; and also $800 per annum, ground rent, for part of said premises held by Anthony Harkness and his devisees, by perpetual lease, and taxes assessed at $2,080 59 and paid, which are by said lease reserved and to be paid by the lessee or tenants as rent, and are a prior and paramount lien upon all the premises so demised.

26 8. To the eighth, they answer that they have no knowledge, information, or belief of any such claim.

9. To the ninth, they answer that they have no knowledge, information of any such claim, but they make no objection to such marshalling, if one-half the proceeds of such sale be applied to pay their prior lien aforesaid.

10. To the tenth, they answer that they know not, nor have they any information, save by the said bill of the plaintiffs, what the said David Gibson claims by the said instrument, and cannot set forth as to their belief or otherwise.

11. To the eleventh, they answer in like manner.

12. To the twelfth, they answer that it is claimed by sundry, but they cannot say whether or not all, of the said general creditors that both the said alleged mortgages are invalid.

13. To the thirteenth, they answer that they know not, nor are they informed, save by the plaintiff's bill, that such is the claim of any of the general creditors of said Robert Moore and Sons. On the contrary, they are informed and believe that some of them have admitted that these defendants ought to be paid out of said funds for the occupation and use of their said leased premises by the plaintiffs for the benefit of said assignment.

14. To the fourteenth, they answer that such is the fact, as they are informed and believe.

15. To the fifteenth, they answer that they know not, but are informed and believe that such is the fact.

16. To the sixteenth, they answer that such is the fact, as they are informed and believe.

And these defendants, having fully answered, pray that their rights in the premises may be protected; and to the end that they may have the relief hereinbefore claimed in their behalf, they pray that this may be

27 taken as a cross-bill against the plaintiffs and all their codefendants in this cause; and that the court, on the hearing, will decree that the plaintiffs pay them, out of the funds in their hands, the rent hereinbefore stated, for the use and occupation of said leasehold premises from the 21st day of March, 1868, and that the unexpired term of said leasehold be sold, and the proceeds applied toward paying the same; and that the said pretended mortgages to the said David Gibson and Gaylord, Son and Co., be declared to be of no force or effect; and that the plaintiffs fully account for all the property received by them from the said Robert Moore and Sons, or the proceeds thereof, and for such other and further relief as, under the act of Congress aforesaid, and in equity, these defendants are entitled to have and their costs.

KING, THOMPSON & AVERY,
Solicitors for Gano & Wife.

STATE OF OHIO, *Hamilton County, ss:*

Charles L. Gano, one of the defendants aforesaid, being duly sworn, saith that the matters and things stated in the foregoing answer and cross-bill, so far as stated of his knowledge, are true, and so far as stated upon the information of others are true, as he believes.

C. L. GANO.

Sworn and subscribed before me this 29 day of January, 1869.

{ NOTARIAL SEAL HAM. CO., O. } JULIUS DEXTER, *Not. Pub. Ham. Co., O.*

And afterwards, to wit, but on the same day and in the year last aforesaid, came Daniel W. Woodmansee, and Mary, his wife, Chester M. Poor, and Louisa, his wife, James W. K. Lemon, and Alice, his wife, and Charles G. King, William D. King and Annie M. King, who are minors, and who come by the said Daniel W. Woodmansee, their guardian ad litem by King, Thompson & Avery, esquires, their solicitors, and filed in the clerk's office of said court their answer and cross-bill herein, which said answer and cross-bill is in the words and figures following, to wit:

28

Answer & cross-bill of D. W. Woodmansee et al.

Circuit court of the United States, southern district of Ohio. In chancery.

The answer of Daniel W. Woodmansee, and Mary, his wife, Chester M. Poor, and Louisa, his wife, James W. K. Lemon, and Alice, his wife, and Charles G. King, William D. King, and Annie M. King, who are minors, and who come by the said Daniel W. Woodmansee, their guardian ad litem.

These defendants, reserving all right of exception to said bill of complaint, for answer thereto say it is true that Anthony Harkness made the demise and agreement to and with Robert Moore and John G. Richardson, as partners, which is set forth in said bill and upon the terms therein stated; and afterwards, in the month of May, 1858, died, leaving a last will, which was duly proven and recorded in the probate court of Hamilton County, Ohio, whereby he devised and gave to these defendants one undivided half of all the said premises so demised and the rents thereof; but whether the buildings on said premises are now of greater value than the appraisement mentioned in the bill, they have no knowledge, but are informed that such is not the fact, and they therefore deny said allegation. They are informed and believe that the said Richardson did assign all his interest in said lease and agreement as well as the machinery, engines, boilers, tools, and chattles, mentioned in the bill, to the said Robert Moore, and they aver that the said partnership or firm of Robert Moore and Sons named in the bill, thereupon immediately, and under and by virtue of said demise and assignment, entered and took possession of all said premises, and continued to occupy, use, and enjoy the said premises in conducting and carrying on their business mentioned in the bill from the time of said assignment until the day of March, 1868, and as tenants of these defendants, paid them the rents reserved in said lease for said undivided one-half from the time of said assignment until the 1st day of February, 1867, and likewise paid the ground rent of $800 00, and taxes

29

as reserved in said lease. And these defendants, further answering, aver that the plaintiffs having full knowledge of said lease and the rents and terms therein reserved, and of the said tenancy of Robert Moore and Sons so created and existing did, on said day of March, 1868, under and by virtue of the assignment made to them by said firm of Robert Moore and Sons as mentioned in the bill, enter into and take possession of all said leasehold premises, together with the said machinery, engines, boilers, tools, and chattles, contained thereon, and have ever since held, occupied, and used the same as the assignees of said Robert Moore and Sons, and these defendants therefore deny any and all statements in the bill alleging that said leasehold premises were not assigned by said Robert Moore to the said firm of Robert Moore and Sons, and were not assigned by said Robert Moore and Sons to the plaintiffs nor accepted by the plaintiffs, and that the plaintiffs as such assignees are not liable for the rents, use and occupation of said premises.

30 These defendants, on the contrary, claim, and will insist, that they are justly entitled to recover of the plaintiffs out of the funds which have come into their hands, as such assignees, the full amount of the rents and taxes reserved by said lease as to their one-half, which have accrued from the said day of March, during said occupation of the plaintiffs and so long as the same shall continue, and they aver that, besides the rent so due from the plaintiffs at the rate of $6,000 00 per annum, the plaintiffs have been compelled to pay one-half of said ground rent at the rate of $800 00 per annum and taxes assessed upon said premises to the amount of $2,080 59, for all which they pray this court to authorize and order the plaintiffs to pay and reimburse them as expenses justly and necessarily incurred in discharge of their trust.

These defendants, further answering, deny that the pretended mortgages mentioned in the bill as having been executed by said Robert Moore and Sons to the defendants David Gibson and Gaylord, Son and Co., were or are of any force or validity whatever, and, on the contrary, aver that neither of said pretended mortgages was executed or filed in lawful manner and form, and the said pretended mortgages were given by said Robert Moore and Sons, within six months before the filing of the petition against them by these defendants and others, praying that they be declared bankrupts, which is mentioned in the bill, and that at the time of the pretended making of said mortgages the said Robert Moore and Sons were wholly insolvent, and intended thereby to defeat, impair or evade the act to establish a uniform system of bankruptcy throughout the United States passed by Congress and approved March 2nd, 1867, and the said David Gibson and Gaylord, Son and Co.,

31 respectively, had reasonable cause to believe that they were then insolvent or to be acting in contemplation of insolvency, and that said pretended mortgages and each of them were given with a view to prevent other creditors of said Robert Moore and Sons from being paid or secured equally with the said David Gibson and Gaylord, Son and Co., and with a view to defeat, impair, hinder, or evade the provisions and object of said act, and defendants therefor insist that said pretended mortgages, if any such were made, were and are null and void, and they pray judgment thereon accordingly.

These defendants, further answering, admit that the said Robert Moore and Sons did, on or about the 21st of March, 1868, execute to the plaintiffs the deed of assignment set forth in the bill, but they aver that at the time when the same was made, the said Moore and Sons were wholly insolvent, and that the said assignment was made with a view to prevent the property so assigned from coming to their assignee in

bankruptcy and to prevent the same from being distributed under the act of Congress aforesaid, and to defeat the object of said act, and to impair, hinder, and evade the provisions of said act, and was made within six months next before the filing of the petition aforesaid by these defendants and others against said Robert Moore and Sons, praying that they be adjudged to be bankrupts, and that said assignment was and is wholly null and void, excepting this, that, after the filing of said petition last mentioned by these defendants and others, and before the sale of the property aforesaid by the plaintiffs, claiming to be acting under said assignment, these defendants agreed and consented that the plaintiffs might proceed to sell the said property and hold the
32 proceeds subject in all respects to such lawful decision and order as might or should be made by the district court of the United States in bankruptcy in the proceeding under the petition aforesaid, and should account for and dispose of the same accordingly, to all which the plaintiffs consented and agreed, and, under said agreement, proceeded to sell and dispose of the property so assigned to them.

These defendants, further answering, as to the allegations in the bill, that the plaintiffs, as the assignees of said Robert Moore and Sons, have received $16,676 70 only, in cash, and that the sum of $17,300 05 only resulted from the sale of the chattles so assigned to the plaintiffs, and that the total amount of the fund in their hands, will not exceed $20,000 00, say that they have no knowledge as to said matters, or either of them; and, as the plaintiffs have not filed or exhibited any report or account of the sales or proceedings, these defendants cannot admit said allegations or either of them; but, on the contrary, have been informed and believed that the plaintiffs had collected and received a much larger amount than above mentioned from the property so assigned and delivered to them, and they therefore claim that a more full, certain, and particular account of the same be rendered by the plaintiffs at the hearing.

These defendants, further answering, admit, as alleged in the bill, that they have notified the plaintiffs that they claim and will insist that the plaintiffs, as assignees aforesaid, are liable to them for the rents and taxes of said premises, as above more particularly
33 stated, and that they have demanded of the plaintiffs, payment of the same.

These defendants, for answer to the interrogatories propounded in the bill, say:

1. To the first, they answer that said Anthony Harkness did demise said premises upon the terms and conditions, among others, which are stated in the bill.

2. To the second, they answer that said Richardson did, in form, make an assignment of said lease to said Robert Moore, but whether or not said Moore thereby became the sole owner of all the interest and estate of the lessees under said lease, they know not, and are not informed, save by the plaintiffs' said bill, and cannot set forth as to their belief or otherwise.

3. To the third, they answer that it is not a fact, as they are informed and believe, that said leasehold interest was never assigned by said Robert Moore to said Robert Moore and Sons.

4. To the fourth, they answer that they know not, nor are they informed, save by the plaintiffs' said bill, whether or not said estate was assigned to the plaintiff by the said deed, and they cannot set forth as to their belief or otherwise.

5. To the fifth, they answer that it is not a fact, as they are informed and believe, that said leasehold estate was, until September 15th, 1868, the property of said Robert Moore exclusively.

6. To the sixth, they answer that it is not a fact, as they are informed and believe, that the plaintiffs, as such assignees, have not elected to accept the said leasehold.

7. To the seventh, they answer that it is a fact that they claim a priority of payment for their one-half of the rents and taxes ac-
34 cruing under said lease as expenses of said assignment from March 21st, 1868, and at the rate of $6,000 00 per annum as rent; and also $800 00 per annum, ground rent, for part of said premises held by Anthony Harkness and his devisees, by perpetual lease, and taxes assessed at $2,080 59 and paid, which are by said lease reserved and to be paid by the lessee or tenants as rent, and are a prior and paramount lien upon all the premises so demised.

8. To the eighth, they answer that they have no knowledge, information, or belief of any such claim.

9. To the ninth, they answer that they have no knowledge or information of any such claim, but they make no objection to such marshalling, if one-half the proceeds of such sale be applied to pay their prior lien aforesaid.

10. To the tenth, they answer that they know not, nor have they any information, save by the said bill of the plaintiffs, whether said David Gibson claims by the said instrument, and cannot set forth as to their belief or otherwise.

11. To the eleventh, they answer in like manner.

12. To the twelfth, they answer that it is claimed by sundry, but they cannot say whether or not all, of the said general creditors that both the said alleged general mortgages are invalid.

13. To the thirteenth, they answer that they know not, nor are they informed, save by the plaintiffs' bill, that such is the claim of any of the general creditors of said Robert Moore and Sons; on the contrary, they are informed and believe that some of them have admitted that these defendants ought to be paid out of said funds for the occupation and use of their said leased premises by the plaintiffs for the benefit of said assignment.

35 14. To the fourteenth, they answer that such is the fact, as they are informed and believe.

15. To the fifteenth, they answer that they know not, but are informed and believe that such is the fact.

16. To the sixteenth, they answer that such is the fact, as they are informed and believe.

And these defendants, having fully answered, pray that their rights in the premises may be protected; and to the end that they may have the relief hereinbefore claimed in their behalf, they pray that this may be taken as a cross-bill against the plaintiffs and all their codefendants in this cause; and that the court, on the hearing, will decree that the plaintiffs pay them, out of the funds in their hands, the rent hereinbefore stated, for the use and occupation of said leased premises, from the 21st day of March, 1868, and that the unexpired term of said leasehold be sold, and the proceeds applied toward paying the same; and that the said pretended mortgages to the said David Gibson and Gaylord, Son and Co., be declared to be of no force and effect; and that the plaintiffs fully account for all the property received by them from the said Robert Moore and Sons, or the proceeds thereof, and for such

other and further relief as, under the act of Congress aforesaid, and in equity, these defendants are entitled, and their costs.

KING, THOMPSON & AVERY,
Solicitors for Def'ts.

STATE OF OHIO, *Hamilton County, ss:*

Chester M. Poor, one of the defendants aforesaid, being duly sworn, saith that the matters and things stated in the foregoing answer
36 and cross-bill, so far as stated of his own knowledge, are true, and so far as stated upon the information of others are true, as he believes.

CHESTER M. POOR.

Sworn and subscribed before me this 29th day of January, 1869.
{ NOTARIEL SEAL } S. T. CRAWFORD,
{ HAMILTON CO., O. } *Notary Public, Hamilton Co., Ohio.*

And afterwards, to wit, but on the same day and in the year last aforesaid came Thomas G. Gaylord, Benjamin B. Gaylord, Jared B. Green, Charles S. Green, William Elden, and William Colcord, partners under the name and firm of Gaylord, Son & Co., by Aaron F. Perry and H. Jenny, esquires, their solicitors, and filed in the clerk's office of said court their answer and cross-bill herein, which said answer and cross-bill is in the words and figures following, to wit:

Answer and cross-bill of T. G. Gaylord et al.

United States circuit court for the southern district of Ohio.

AMERICUS WARDEN AND AUGUSTUS S. LUDLOW } 1018.
vs.
THOMAS G. GAYLORD ET ALS.

The joint answer of Thomas G. Gaylord, Benjamin B. Gaylord, Jared B. Green, Charles S. Green, William Elden, and William Colcord, partners under the name and firm of Gaylord, Son & Co., defendants, to the bill of complaint of Americus Warden and Augustus Ludlow, complainants.

These defendants, reserving to themselves all right of exception to the said bill of complaint, for answer thereto, say:
37 That, on or about the 23d day of January, A. D. 1868, the said Robert Moore, Arthur G. Moore, Hamilton Moore, Frederick R. Moore, and Augustus Moore, were partners under the firm of Robert Moore & Sons, engaged in the city of Cincinnati in conducting the large business establishment described in the bill of complaint; that said firm was in good credit, was believed by these defendants to be solvent, with ample means to pay its debts, and so represent itself to these defendants in the several transactions after stated.

That at the date last aforesaid the said firm of Robert Moore & Sons, representing itself to these defendants as amply solvent and able to pay its debts, desired, for business purposes in connection with their said business, the endorsement of these defendants of the business paper of said Moore & Sons to an extent not to exceed twenty thousand dollars, ($20,000,) which they represented to be sufficient to accomplish the purposes they had in view, without embarrassment. That said Robert

Moore & Sons proposed to secure such endorsements by a chattel mortgage covering their said establishment; and these defendants entered into the arrangement with no doubt of the pecuniary soundness of said firm, and with no motive except the motive to accommodate said Robert Moore & Sons, unless it may be an indirect motive on the part of these defendants by securing the good will of said Robert Moore & Sons to secure a good and profitable customer in said firm, to the business of these defendants.

That in pursuance of said arrangements these defendants, on or about the said 23d day of January, A. D. 1868, endorsed a certain promissory note of that date, made by said Robert Moore & Sons, for the sum of five thousand dollars, ($5,000,) payable in ninety days after the date thereof; that, on or about the 5th day of February, A.
38 D. 1868, these defendants endorsed a certain other promissory note of that date, made by said Robert Moore & Sons, for the sum of two thousand dollars, ($2,000,) payable in sixty days after the date thereof; that, on or about the 9th day of March, A. D. 1868, these defendants endorsed a certain other promissory note of that date, made by said Robert Moore & Sons, for the sum of four hundred dollars, ($400,) payable in sixty days after the date thereof; and that, on or about the 17th day of March, A. D. 1868, these defendants endorsed a certain other promissory note of that date, made by said Robert Moore & Sons, for the sum of ten thousand dollars, ($10,000,) due in sixty days after the date thereof, all which they have since been compelled to pay, and have paid, amounting in the aggregate to the sum of seventeen thousand four hundred dollars, ($17,400.)

That said Robert Moore & Sons, in pursuance of said arrangement, on or about the 27th day of January, A. D. 1868, made a chattel mortgage covering their said establishment to defendants to secure their said endorsements, but which these defendants did not take steps to record until on or about the said 17th day of March, A. D. 1868, when, preparatory to filing in the office of the recorder of Hamilton County, Ohio, they submitted it to the opinion of an attorney. The attorney took some exceptions to the mortgage, as drawn, on grounds never fully understood by these defendants, recommending its surrender and the execution of a new mortgage. That these defendants, not aware of risks in so doing, surrendered the mortgage and took a new one, which they filed in the office of the recorder of said county, on the 18th day of March, A. D. 1868, at 5.25 o'clock p. m. of said day, and which
39 is the mortgage under which they now claim. That a copy of said mortgage is hereto annexed and marked Exhibit "A," and the original will be produced in court when required. That, at the time of the surrender of the said first mortgage and the acceptance of the new one above stated, the promissory note last before mentioned was endorsed as aforesaid.

That these defendants say that said mortgage was accepted by them in good faith, under the circumstances stated, and not with any purpose or in any manner forbidden by the act of bankruptcy, passed March 2, 1867, or in fraud thereof; that they claim a first lien on the property covered by said mortgage to the extent before stated, together with interest thereon from the time when they paid the said several amounts, viz: On five thousand dollars ($5,000) from the 25th day of April, A. D. 1868; on said sum of two thousand dollars ($2,000) from the 8th day of April, A. D. 1868; on said sum of four hundred dollars from the 11th day of May, A. D. 1868; and on said sum of ten thousand dollars ($10,000) from the 19th day of May, A. D. 1868.

That when these defendants surrendered their said first mortgage and accepted the new one above stated, they had no notice of the mortgage to David Gibson, mentioned in said bill. That these defendants have no knowledge, information, or belief in regard to the circumstances under which the said Gibson mortgage was made, except as they have heard them spoken of by others, substantially as stated in the bill. That these defendants not admitting the allegations relating to said Gibson mortgage, will insist upon full proof of every particular necessary to its validity.

That as to the several other matters and things stated in said bill, defendants have heard from different sources that they are substantially as stated in the bill, and have no belief to the contrary, but will ask leave of court, should further information require it, to deny and contest the same.

That, with such exceptions as shall be after stated herein, and subject to the qualifications above set forth, these defendants answer the said several interrogatories annexed to said bill in the affirmative, on their best knowledge, information, and belief.

That, by way of such exceptions, these defendants state that their said mortgage, enquired of in the 11th interrogatory to said bill, is of date March 17, A. D. 1868, and was filed in the office of the recorder of Hamilton County, Ohio, on the 18th day of said month, at 5.25 o'clock p. m. of said day, and not of date March 8, 1868, and filed in said office on March 18, at 12 o'clock m., of said day, as in said interrogatory stated.

And these defendants therefore pray that this may be taken as a cross-bill against the plaintiffs and their codefendants; that their said mortgage may be declared to be a valid and subsisting lien upon the property in their said mortgage specified; that said property may be sold, and that out of the proceeds arising from such sale, the said sums of money, with interest thereon, as aforesaid, may be paid to these defendants; and in case the said property, or any part thereof, has been sold, as in the bill of complaint stated, that complainants may be ordered to apply the proceeds arising from such sale in payment of the sums, with interest, as aforesaid, to these defendants; and for such further relief in the premises as the nature of the circumstances of the case may require, and to this honorable court shall seem meet.

PERRY & JENNEY,
Solicitors for Defendants.

UNITED STATES OF AMERICA,
Southern District of Ohio:

I, William Elden, one of the answering defendants named in the above answer, do make solemn oath that the statements set forth in the foregoing answer and cross-bill are true, so far as the same are stated of my own knowledge; and that the matters stated therein on information and belief, are true according to the best of my knowledge and belief.

W'M ELDEN.

Sworn to before me and subscribed in my presence this first day of February, A. D. 1869.

{ NOTARIAL SEAL, HAMILTON CO., O. }

LUMAN ALLEN,
Notary Public, Hamilton County, Ohio.

Exhibit "A," to answer & cross-bill of Gaylord, Son & Co.

Exhibit "A" referred to in the foregoing answer.

Know all men by these presents that Robert Moore & Sons, a firm doing business in the city of Cincinnati, State of Ohio, consisting of Robert Moore, Arthur G. Moore, Hamilton Moore, Fred. R. Moore, and Augustus Moore, in consideration of seventeen thousand four hundred dollars, ($17,400,) to them paid by Gaylord, Son & Co., of the same place, the receipt of which is hereby acknowledged, do hereby bargain, sell, and convey, to the said Gaylord, Son & Co., and assigns, the goods and chattels described in the schedule hereunto annexed; to have and to hold the same to the use of the said Gaylord, Son & Co., their executors, administrators, and assigns: Provided, nevertheless, That whereas the said Gaylord, Son & Co., are liable as endorsers and other-
42 wise, to pay certain debts of the said Robert Moore & Sons, and the said Robert Moore & Sons are indebted to the said Gaylord, Son & Co., and whereas the said Robert Moore and Sons are desirous of renewing their paper with the endorsement of said Gaylord, Son & Co.: Now, if the said Robert Moore & Sons shall keep and save the said Gaylord, Son & Co., harmless, from any costs, damages, or loss arising from or out of such endorsement, security, and debt, the said Gaylord, Son & Co., agree to renew, not to exceed eighteen months, then this conveyance shall be void; otherwise to be and remain in full force.

In witness whereof, the said Robert Moore and Sons, by Arthur G. Moore, one of the above-named firm, have hereunto set their hand and seal, this seventeenth day of March, in the year of our Lord one thousand eight hundred and sixty-eight.

ROBERT MOORE & SONS, [SEAL.]
By A. G. MOORE.

Signed, sealed, and acknowledged in presence of us—
WILLIAM STANTON.
A. S. LUDLOW.

[Stamped $17 50, U. S. int. rev. cancelled.]

Statement of claim.

STATE OF OHIO, *County of Hamilton, ss:*

George B. Bradley, book-keeper and agent of Gaylord, Son & Co., mortgagee, named in this mortgage, being duly sworn, makes oath and says that their claim against Robert Moore & Sons, mortgagor, of which a true statement is hereto annexed, amounts to the sum of seventeen thousand four hundred dollars; and that said claim is just and unpaid.

GEO. B. BRADLEY.

Sworn to and subscribed before me, a notary public, in and for
43 said county, this 17th day of March, A. D. 1868.

[NOTARIAL SEAL.] JAMES R. CHALLEN,
N. P., Ham. Co., O.

Schedule.

All the machinery, engines, boilers, tools, line-shafting, patterns, and apparatus used and held by said Robert Moore & Sons, in their estab-

lishment known as The Cincinnati Locomotive Works, on the northwest corner of Pike & Front streets, Cincinnati, O.

Notes endorsed for their accommodation	$15,000
Notes for iron sold, renewed	2,400
	$17,400

And afterwards, to wit, on the 11th day of February, in the year last aforesaid, came Mary Harkness, by Thomas J. Henderson, esq., her solicitor, and with the consent of Egley and Warden, esquires, solicitors for complainants, filed in the clerk's office of said court her answer and cross-bill herein, which said answer and cross-bill is in the words and figures following, to wit:

Answer & cross-bill of Mary Harkness.

Circuit court of the United States, southern district of Ohio. In chancery.

The separate answer of Mary Harkness, defendant, among others, to to the bill filed by Americus Warden and Augustus S. Ludlow, complainants.

This defendant, reserving all right of exception to said bill of complainants, for answer thereto, or to such parts thereof as she is advised it is material for her to make answer unto, says that she admits that she is a creditor of Robert Moore and Sons, as alleged in said bill, as is evidenced by three promissory notes, copies of which with all credits and interest, and all other endorsements are hereto attached, marked 44 A, B, & C. Defendant further states, that with respect of the note for $37,780 92, marked A, that said Robert Moore and Sons, became the successors of Moore and Richardson, and got from them the personal property for which this note was given, and assumed the payment of the said note, and that they continued to pay the interest thereon until the first day of September, A. D. 1867, and thereby became liable to pay her the amount of the said note. Defendant further states that there is now due to her upon the note of Moore and Richardson as aforesaid, assumed, including interest up to the first day of February, 1869, the sum of $40,992 22, and also upon the other two notes including interest up to the first day of Feb'y, 1869, the sum of $5,161 44, making in the whole the sum of $46,153 76, with interest as aforesaid. This defendant, further answering, denies that the pretended mortgages mentioned in the bill as having been executed by said Robert Moore and Sons to the defendants David Gibson and Gaylord, Son and Company, was or are of any force or validity whatever, and on the contrary avers that neither of said pretended mortgages was executed or filed in lawful manner and form, and that said pretended mortgages were given by the said Robert Moore and Sons, within six months before the filing of the petition against them, praying that they be declared bankrupts, which is mentioned in the bill, and that at the time of the pretended making of said mortgages, the said Robert Moore and Sons were wholly insolvent, and intended thereby to defeat, impair, hinder, and evade the provisions and object of said act, and defendant therefore insists that said pretended mortgages, if any such were made, were and are null and void, and she prays judgment thereon accordingly.

Defendant, further answering, admits that said Robert Moore and
45 Sons, about the 21st March, 1868, executed to the plaintiffs, the deed of assignment mentioned in said bill.

This defendant, for answer to the interrogatories propounded in the bill, says:

To the first, she answers that the said Anthony Harkness did demise said premises upon the terms and conditions, among others, which are stated in the bill.

To the second, she answers she has no information or belief and therefore cannot answer the interrogatory.

To the 3d, she also answers that she has no information or belief, and therefore cannot answer.

To the 4th, she makes the same answer.

To the 5th, she makes the same answer.

To the 6th, she makes the same answer.

To the 7th, she makes the same answer.

To the 8th, she makes the same answer.

To the 9th, she makes the same answer.

To the 10th, she answers in like manner.

To the 11th, she answers in like manner.

To the 12th, she claims that said mortgages mentioned in the bill are invalid.

To the 13th, she claims the fund arising from the sale of the personal property should be distributed among the creditors, pro rata.

To the 13th, she answers that she denies that any of the creditors have a priority of lien on the said fund to pay their clams.

To the 14th, she admits the fact so to be.

To the 15th, she admits the fact so to be.

To the 16th, she answers that she has no knowledge or belief,
46 except what the bill discloses, and supposes the same to be the fact.

And this defendant, having fully answered, prays that her rights in the premises may be protected, and to that end that she may have the relief hereinbefore claimed in her behalf. She prays that this may be taken as a cross-bill against the plaintiffs and all the defendants in this cause, and that the court on the hearing, will decree that the plaintiffs will pay her out of the funds in their hands, the amount hereinbefore stated to be due her; that the unexpired term of said leasehold may be sold, and the proceeds be applied towards the paying the same, and that the said pretended mortgages to the said David Gibson and Gaylord, Son & Company, be declared to be of no force or effect, and that the plaintiffs fully account for all the property received by them from the said Robert Moore & Sons, or the proceeds thereof, and for such other or further relief in equity this defendant is entitled to have, and her costs.

THOMAS J. HENDERSON, *Sol.*

THE STATE OF OHIO,
Hamilton County, ss:

Robert P. Harkness, being duly sworn, deposes and says that he is the agent of Mary Harkness the hereinbefore-mentioned defendant, and that all the several matters and things which are stated in the foregoing answer and cross-bill as from the information of others, he believes to be true, and that all the several other matters and things therein set forth are true in substance and in fact.

ROBERT P. HARKNESS.

Sworn to and subscribed before me this 10th day of February, A. D. 1869.

{ NOTARIAL SEAL } N. MARCHANT,
{ HAMILTON COUNTY, O. } *Notary Public.*

47 *Exhibit A, to ans. & cross-bill of Mary Harkness.*

A.

$37,780 92. CINCINNATTI, *Sept. 1st*, 1855.

One year after date we promise to pay Anthony Harkness, or order, thirty-seven thousand seven hundred and eighty $\frac{92}{100}$ dollars, with interest from date at the rate of eight per cent.

Interest to be paid semi-annually until paid.

MOORE AND RICHARDSON.

Across the face of said note is written the following words to wit:

Pay Mary Harkness or order without recourse.

CHA'S HARKNESS,
One of the Executors of A. Harkness.

With following endorsements and credits on ac. of above note:

1856.		
March 14th.	By 6 mo's interest to 1st inst., from Moore & Richardson	1,511 23
Sept, 10.	" " " " " " "	1,511 23
1857.		
March 12.	" " " " " " "	1,511 23
1858.		
February 5.	" " " to 1st Sept., 1857, " " "	1,511 23
Nov. 5th.	" " " to 1st M'ch, 1858, " " "	1,511 23
1859.		
Feb. 16.	" " " to 1st Sept., 1858, " " "	1,511 23
March 10.	" " " to 1st inst., " " "	1,511 23
Sept. 12.	" " " " " " "	1,511 23
1860.		
March 5.	" " " " " " "	1,511 23
Sept. 3.	" " " " " " "	1,511 23
1861.		
April 1st.	" " " to 1st M'ch, 1861. " " "	1,511 23
Nov. 4.	" cash on ac. int. due Sept. 1, '61, " " "	150 00
Dec. 10.	" " " " " " "	175 00
1862.		
Jan. 17.	" " " " " " "	120 00
Feb. 15.	" " " " " " "	150 00
April 7.	" " " " " " "	150 00
May 7.	" " " " " " "	150 00
48 June 6.	By cash on ac. int. due Sept. 1, '61, from Moore & Richardson	200 00
July 12.	" " " " " " "	150 00
Aug. 13.	" " " " " " "	250 00
Sept. 27.	" " " " " " "	120 00
Oct. 31.	" " " " " " "	200 00
1863.		
Jan. 27.	" " int. on note " " "	500 00
M'ch 11.	" " " " " " "	500 00
April 25.	" " " " " " "	600 00
July 11th.	" " " " " " "	400 00
Sept. 19th.	" note in full for interest to Sept. 1, '63, " "	3,741 15
1864.		
April 2.	" cash 6 mo's interest to M'ch 1, '64, " "	1,511 23
Oct. 6.	" " " to Sept. 1, '64, " "	1,511 23
1865.		
M'ch 18.	" " " to 1st inst. " " "	1,511 23
Sept. 11.	" " " " from Moore & Sons	1,511 23

1866.				
March 22.	" " " " " " "	....	1,511	23
Aug. 31.	" 6 mo's int. on note to 1st Sept., " " "	....	1,511	23
1867.				
April 3.	" " " 1st M'ch, " " "	....	1,511	23
Sept. 4.	" " " " Sept., " " "	....	1,511	23
Interest from Sept. 1, '67, to Feb. 1st, 1869, on above note is		.....	3,211	30
Making with the principal		.....	$40,992	22

Exhibit to answer & cross-bill of Mary Harkness.

B.

$1,660 65. CINCINNATI, *Jan.* 6, 1868.

Ninety days after date we promise to pay to the order of Mary Harkness, sixteen hundred sixty and $\frac{65}{100}$ dollars, payable at the Central National Bank. Value received.

ROBERT MOORE & SONS.

Due April 5|8, 1868.
Interest from April 8th, to Feb'y 1, 1869, on above note is $81 14.

49 *Exhibit C to ans. & cross-bill of Mary Harkness.*

C.

$3,272 93. CINCINNATI, *Feb.* 4, 1868.

Ninety days after date we promise to pay to the order of Mary Harkness thirty-five hundred seventy-two and $\frac{93}{100}$ dollars. Payable at the Central National Bank. Value received.

ROBERT MOORE & SONS.

Due May 4|7, 1868.
Interest from May 7, '68, to Feb. 1, '69, on above note, $146 72.

And afterwards, to wit, on the twentieth day of February, in the year last aforesaid, came David Gibson, by Hoadley, Jackson & Johnson, esquires, his solicitors, and filed in the clerk's office of said court, his answer and cross-bill herein, which said answer and cross-bill is in the words and figures following, to wit:

Ans. & cross-bill of David Gibson.

Circuit court of the United States for the southern district of Ohio.

AMERICUS WARDEN & AUGUSTUS S. LUDLOW
vs.
THOMAS G. GAYLORD ET AL. } No. 1081.

The separate answer of David Gibson to the bill of complaint of said Americus Warden & Augustus S. Ludlow.

The said David Gibson, reserving unto himself all right of exception to the said bill of complaint, for answer thereunto, or to so much thereof as he is advised it is necessary for him to answer unto, says as follows:

That, on or about the 8th day of March, 1868, the said Robert Moore,

Arthur G. Moore, Hamilton Moore, Frederick R. Moore, and Augustus Moore were partners doing business under the firm-name of Rob-
50 ert Moore & Sons, and carrying on & conducting the establishment described in said bill of complaint; that said firm were in good credit & repute, and believed by this respondent to be entirely solvent & possessed of ample means to pay all their debts & liabilities, & that said firm so represented themselves to this respondent; that, on the said 8th day of March, 1868, this respondent endorsed the note of said firm of Robert Moore & Sons, made & delivered by them, for the sum of six thousand dollars; that said note was made payable to the order of this respondent and endorsed by him, and afterwards negotiated by said firm of Robert Moore & Sons; that this respondent received no consideration for his said indorsement except the chattel mortgage hereinafter mentioned, but that the same was done for the accom'odation of said firm and in full confidence that they were solvent and able to pay all their debts, and at the special request of said firm; that to secure this respondent for his said endorsement the said firm executed and delivered to this respondent, at the same time said note was endorsed and as special inducement therefor, their certain chattel mortgage, covering the machinery, engines, boilers, machine tools, line-shafting, patterns, and all office furniture owned and used by said firm in their establishment known as the Cincinnati Locomotive Works, at the northwest corner of Pike and Front streets, in Cincinnati, Ohio; that, on the 18th day of March, 1868, at 12 o'clock m., said chattel mortgage was filed in the recorder's office of Hamilton County, all of which will more fully appear by said chattel mortgage, a copy of which is hereto annexed, marked "A"; that at the end of sixty days, when the said note became due and payable, the said firm of Robert Moore & Sons,
51 failed to pay said note or any part thereof, and this respondent was obliged to pay the same; that, by the failure of said firm to take up and pay their said note when it became due, the condition of said chattel mortgage was broken, and this respondent became entitled to take possession of said mortgaged property; and further that he now has a valid and binding lien upon all the machinery and other articles and property included in said mortgage for the payment of said sum of six thousand dollars and interest from the 7th day of May, 1868.

Respondent, further answering, says in answer to the 10th interrogatory annexed to the bill of complainants, that it is true that he claims that said chattel mortgage is the first and paramount lien on the chattels described therein, and that he is entitled to priority of payment, out of proceeds of the sale of such chattels, before all other creditors.

Respondent, further answering, says in answer to the other interrogatories annexed to said bill of complaint, that he has no knowledge, information, or belief in regard to the matters and things inquired of therein, except as he is informed by said bill.

Respondent, further answering, says that as to the other matters and things stated and set forth in said bill of complaint, he has no knowledge, information, or belief, except as hereinabove stated, and as he is informed by said bill, and therefore demands strict proof thereof.

Wherefore respondent prays that this, his answer, may be taken as a cross-bill to said complainants' bill of complaint, and the answers of his codefendants herein; that his chattel mortgage may be decreed and declared to be a valid, binding, and subsisting lien upon the property in said chattel mortgage specified; that said property may be sold
52 and the amount of his claim and interest as aforesaid be paid to him out of the proceeds of such sale, or in case said property has

been already sold, that complainants be ordered to pay to him the said sum of six thousand dollars and interest as aforesaid, out of the proceeds of said sale; and that he may have such other and further relief as is agreeable to equity.

DAVID GIBSON.

HOADLEY, JACKSON & JOHNSON,
Solicitors for David Gibson.

UNITED STATES OF AMERICA,
Southern District of Ohio, ss:

David Gibson, being first duly sworn, deposes and says that he has heard the foregoing answer read, and that the statements thereof are true, as far as they are stated of his own knowledge, and as to those matters stated on information and belief, he believes them to be true.

DAVID GIBSON.

Sworn to and subscribed before me by said David Gibson on this 16th day of February, 1869.

{ NOTARIAL SEAL } REUBEN TYLER,
{ HAMILTON CO., O. } *Notary Public, Ham. Co., O.*

Exhibit "A" to ans. and cross-bill of D. Gibson.

A.

Know all men by these presents that Robert Moore, Arthur G. Moore, Frederick R. Moore, Augustus Moore, and Hamilton Moore, a firm doing business in Cincinnati, Ohio, under the firm-name of Robert Moore & Sons, in consideration of six thousand ($6,000 00) dollars, to them paid by David Gibson of the same place, the receipt of which is here-
53 by acknowledged, do hereby bargain, sell, and convey to the said David Gibson and assigns, the goods and chattels described in the schedule hereunto annexed: To have and to hold the same to the use of the said David Gibson, his executors, administrators, and assigns: Provided, nevertheless, that if the said Robert Moore & Sons shall pay or cause to be paid unto the said David Gibson, his heirs or assigns, their certain promissory note of even date herewith, payable in sixty (60) days from the date hereof, for the sum of six thousand (6,000 00) dollars, at the Central National Bank of Cincinnati, Ohio, which note is payable to the order of said David Gibson, then this conveyance shall be void; otherwise to be and remain in full force.

In witness whereof the said Robert Moore and Sons, by Robert Moore, one of the firm above named, have hereunto set their hand and seal this eighth day of March, in the year of our Lord one thousand eight hundred and sixty-eight.

ROBERT MOORE. [SEAL.]

Signed, sealed, and acknowledged in presence us—
WILLIAM STANTON.
A. S. LUDLOW.

[Stamped $6 00 U. S. int. rev. cancelled.]

Statement of claim.

STATE OF OHIO, *County of Hamilton, ss:*

David Gibson, mortgagee named in this mortgage, being duly sworn, makes oath and says that his claim against Robert Moore & Sons, mortgagor, of which a true statement is hereto annexed, amounts to the sum of six thousand dollars, ($6,000,) and that said claim is just and unpaid.

DAVID GIBSON.

54 Sworn to and subscribed before me, a notary public in and for said county, this 18th day of March, A. D. 1868.

[N. P. SEAL.] DANIEL HENDERSON,
Notary Public, Ham. Co., O.

Schedule.

Machinery, engines, boilers, machine tools, line-shafting, patterns, and all office furniture owned and used by said Robert Moore and Sons, in their establishment, known as the "Cincinnati Locomotive Works," at the northwest corner of Pike & Front streets, in Cincinnati, Ohio.

And afterwards, to wit, on the eighteenth day of March, in the year last aforesaid, came Thomas G. Gaylord, Benjamin B. Gaylord, Jared B. Green, Charles S. Green, William Elden, and William Colcord, partners, under the name and firm of Gaylord, Son & Company, by Perry & Jenney, esquires, their solicitors, and filed in the clerk's office of said court their answer to the cross-bill of Charles L. Gano and Jane Gano, his wife, herein, which said answer is in the words and figures following, to wit:

Answer of Gaylord, Son & Co. to cross-bill of Cha's L. Gano & wife.

Circuit court of the United States, southern district of Ohio. In chancery.

The joint answer of Thomas G. Gaylord, Benjamin B. Gaylord, Jared B. Green, Charles S. Green, William Elden, and William Colcord, partners, under the name and firm of Gaylord, Son & Company, to the cross-bill of Charles L. Gano, and Jane Gano, his wife.

These defendants, reserving all exceptions to said cross-bill, deny all the allegations therein contained except so far as explained and admitted in the answer and cross-bill of these defendants hereinbefore filed.

55 PERRY & JENNEY,
Solicitors for Defendants Gaylord, Son & Co.

And afterwards, to wit, but on the same day, and in the year last aforesaid, came Thomas G. Gaylord, Benjamin B. Gaylord, Jared B. Green, Charles S. Green, William Elden, and William Colcord, partners, under the name and firm of Gaylord, Son & Company, by Perry & Jenney, esquires, their solicitors, and filed in the clerk's office of said court their answer to the cross-bill of Daniel W. Woodmansee, and Mary, his wife, Chester W. Poor, and Louisa, his wife, James W. K. Lemon, and Alice, his wife, and Charles G. King, William D. King, and Annie M. King, minors herein, which said answer is in the words and figures following, to wit:

Answer of Gaylord, Son & Co. to cross-bill of D. W. Woodmansee et al.

Circuit court of the United States, southern district of Ohio. In chancery.

The joint answer of Thomas G. Gaylord, Benjamin B. Gaylord, Jared B. Green, Charles S. Green, William Elden, and William Colcord, partners, under the name and firm of Gaylord, Son & Company, to the cross-bill of Daniel W. Woodmansee, and Mary, his wife, Chester W. Poor, and Louisa, his wife, James W. K. Lemon, and Alice, his wife, and Charles G. King, William D. King, and Annie M. King, minors, who come by the said Daniel W. Woodmansee, their guardian ad litem.

These defendants, reserving all exceptions to said cross-bill, deny all the allegations therein contained, except so far as explained and *and* admitted in the answer and cross-bill of these defendants hereinbefore filed.

PERRY & JENNEY,
56 *Solicitors for Defendants Gaylord, Son & Co.*

And afterwards, to wit, on the fifth day of April, in the year last aforesaid, came Thomas G. Gaylord, Benjamin B. Gaylord, William Colcord, William Elden, Jared B. Green, and Charles S. Green, partners, under the name and firm of Gaylord, Son & Co., by Perry & Jenney, esquires, their solicitors, and filed in the clerk's office of said court their answer to the cross-bill of Mary Harkness herein, which said answer is in the words and figures following, to wit:

Answer of Gaylord, Son & Co., to cross-bill of Mary Harkness.

United States circuit court, southern district of Ohio. In chancery.

The joint answer of Thomas G. Gaylord, Benjamin B. Gaylord, William Colcord, William Elden, Jared B. Green, and Charles S. Green, partners, under the name and firm of Gaylord, Son & Co., to the cross-bill of Mary Harkness.

These defendants, reserving all exceptions to said cross-bill, deny all the allegations therein contained, except so far as explained and admitted in the answer and cross-bill of these defendants hereinbefore filed.

PERRY & JENNEY,
Solicitors for Gaylord, Son & Co.

And afterwards, to wit, on the seventeenth day of May, in the year of our Lord one thousand eight hundred and seventy, an entry was made upon the journal of said court in the words and figures following, to wit:

Decree.—Journal O, page 450.

AMERICUS WARDEN AND AUGUSTUS S. LUDLOW
vs.
THOMAS G. GAYLORD, BENJAMIN B. GAYLORD, Jared B. Green, Charles S. Green, William
57 Elden, and William Colcord, partners, as Gaylord, Son & Company; David Gibson, Charles L. Gano, and Jane Gano, his wife, Daniel W. Woodmansee, and Mary C. Woodmansee, his wife, Chester M. Poor, and Louisa H. Poor, his wife, and Charles G. King, William D. King, } 108. In chancery.

and Annie M. King, infants, and Daniel W. Woodmansee, their guardian; Charles L. Gano, Charles Harkness, and Thomas L. King, executors of the estate of Anthony Harkness, deceased; Mary Harkness, Thomas Dodsworth, Hezekiah Kierstead, and Louisa Hoffman, partners, under the style of Kierstead and Hoffman; Thomas McElvain, and Thomas Phillips, Wil- Means, Thomas W. Means, John Kyle, George Slimer, R. D. Simms, and Mrs. S. B. Hempstead.

This cause now comes on to be heard on the bill, answers, cross-bills, exhibits, and testimony, and is argued by counsel; whereupon the court, being fully advised in the premises, find the equity of the case with the complainants. It is further found that the defendant David Gibson is not entitled to the relief sought in his cross-bill, and that his alleged mortgage is invalid, and gives and secures to him no priority or right whatever, but that he stands, with reference to the funds named in the bill, simply on the footing of a general creditor. The court further finds that the defendants Thomas G. Gaylord, Benjamin B. Gaylord, Jared B. Green, Charles S. Green, William Elden, and William Colcord, partners, under the name and firm of Gaylord, Son & Co., are not entitled to the relief by them sought, and that their alleged mortgage
58 is invalid, and secures to them no priority or right whatever, but that said defendants stand, with reference to the fund named in the bill, simply on the footing of general creditors. As to the claim set up in the answer of Daniel W. Woodmansee, and Mary, his wife, Chester M. Poor, and Louisa, his wife, James W. K. Lemon, and Alice, his wife, and Charles G. King, William D. King, and Annie M. King, the court finds and decrees that the said defendants are not entitled to the full relief by them sought, but are entitled to be paid, out of the funds named in the bill, the sum of twenty-five hundred dollars. It is further ordered and decreed that the fund aforesaid be distributed at the proper time, according to the rules laid down in this decree, and that the costs of this proceeding be also paid out of said fund.

And the defendants, David Gibson, for himself, and Thomas G. Gaylord, Benjamin B. Gaylord, Jared B. Green, Charles S. Green, William Elden, and William Colcord, partners, under the style and firm name of Gaylord, Son & Company, for themselves, severally come and severally pray an appeal to the Supreme Court of the United States, which is allowed as to each of said parties, and it is certified that the amount in controversy exceeds, as to each of said parties, the sum of two thousand (2,000) dollars, and the penalty of the bond for supersedeas upon appeal is fixed at the sum of $500 00. And said David Gibson Thomas G. Gaylord, Benjamin B. Gaylord, Jared B, Green, Charles S. Green, William Elden, and William Colcord, partners, under the firm name and style of Gaylord, Son & Company, present a written statement of the testimony, which is signed by the presiding judge, sealed, allowed, filed and ordered to be made part of the record in this cause; and it is certified to the Supreme Court that the same contains a full and
59 true statement of all the testimony upon which the foregoing decree was rendered.

Certified statement of evidence.

And afterwards, to wit, on the eighteenth day of May, in the year

last aforesaid, came the appellants, by their solicitors, and filed in the clerk's office of said court certified statement of evidence herein, which said statement is in the words and figures following, to wit:

Certified statement of evidence.

WARDEN AND LUDLOW
vs. } 1081.
T. G. GAYLORD ET AL.

It is hereby certified that upon the hearing of this cause the following and no other testimony was heard and considered by the court in addition to the depositions on file, and exhibits.

AMERICUS WARDEN examined.

Interrogatory by Judge Warden:

I am one of the assignees of Robert Moore & Sons. The assignees never elected to take the lease from Harkness to Moore. Have always been particular not to do any act that could be construed into an acceptance of the lease.

By R. King, esqr.:

We obtained possession of the property by being assignees of Moore & Sons. I understand my position as taking their interests—understood that Robert Moore and Sons had no right to the premises. The interest was in Robert Moore himself—understood it to be held by Robert Moore; the owners I understood to be the Harkness heirs.

By Judge Warden:

I understood myself to be there as the representative of the interest of Robert Moore and Sons, in the personal property, and I only
60 entered for the purpose of executing the trust.

By R. King, esq.:

I found the chattel property scattered about the premises. It was so down to the time of the last sale.

By Judge Warden:

I did not attempt to exclude Robert Moore from the possession of the premises. Had I have supposed that I was entering into possession by leaving the chattels there, I would have moved them.

By R. King, esq.:

I had possession of tools, machinery, & etc. The assignees did not make repairs; never spent 5c. on repairs. Mr. Robert Moore did that himself.

ROBERT MOORE examined.

By Judge Warden:

I am one of the late firm of Robert Moore and Sons. They had nothing to do with the realty. I was forbidden by terms of lease to assign it. I had it in my own name. Nothing was done in the matter, except the firm paid rent, as a matter of accommodation to me. There was no written agreement between me and the firm about it.

By R. King, esq.:

Robert Moore and Sons paid rent from time firm was formed down to about the time of the dissolution—probably same week. Firm was formed in spring of 1865—is my recollection—and from that time to March, 1868, continued to carry on business there as Cincinnati Locomotive Works.

By Judge Warden:

61 The assignees had possession of personal property; had nothing to do with realty. I had no right under the lease to transfer it. I staid on the premises during the day. The lease by Anthony Harkness to Moore and Richardson is hereto annexed, marked Exhibit A, and was assigned to me by Richardson 13th February, 1865.

By R. King, esq.:

The machinery & etc., was situate on N. E., cor. Pearl st. The premises contain about 1¾ acres. Assigned machinery of various kinds used in manufacturing locomotives and marine engines, shaftings, trip-hammers, 3 engines and boilers. The machinery and lathes are on stone foundations; their weights hold them down. They were scattered about the premises; some parts of the premises were pretty well filled up. The part on Pearl street was quite clear, it was used as a boiler yard. Assignees took possession of these things and kept them in all parts of the premises until the sale. This sale was in last September. All was not sold at once, I think. Assignees looked after the tools, & etc. Ludlow was at his office on Walnut street, and Warden was at the premises most of the time. They had a night-watchman, and I took care of it by day. I staid up in my office. I think some remnants of the property there now; can't say how much it would have cost to have removed machinery, etc.

By E. M. Johnson, esq.:

Can't say what I did with note of D. Gibson, but presume we had it discounted; we used the money arising from it for the firm of Robert Moore and Sons, to preserve our credit. The money was borrowed, and note and mortgage given in good faith.

By H. Jenney, esq.:

62 Gaylord, Son & Co.'s notes were applied in our firm's business. Gaylord, Son & Co., were merely accom'odation endorsers. The mortgage was made in good faith. There was machinery enough to pay the firm's debts, if rightly managed, but by manipulations much was lost. I approved of the making of the Gibson & Gaylord mortgages.

By R. King, esq.:

I don't remember whether I signed the chattel mortgage to Gibson. There was no express statement among our firm as to who should sign the mortgages. After consultation among the members of the firm, the mortgages were signed; it would be legal whoever signed them. The execution of these mortgages was known to all the firm and acquies'ed in by all of us, and they were made with the knowledge and consent of all. I don't distinctly recollect that I signed the Gibson mortgage. If I did sign it, I intended to sign it Robert Moore and Sons, and if I did not, it was a mere oversight on my part. I don't remember when I signed it, but think at Ludlow and Stanton's office, as they are witnesses to it. The transaction on the part of Gibson was for our accom'odation, and the note was used for the firm of Robert

last aforesaid, came the appellants, by their solicitors, and filed in the clerk's office of said court certified statement of evidence herein, which said statement is in the words and figures following, to wit:

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We obtained possession of the property by being assignees of Moore & Sons. I understand my position as taking their interests—understood that Robert Moore and Sons had no right to the premises. The interest was in Robert Moore himself—understood it to be held by Robert Moore; the owners I understood to be the Harkness heirs.

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By Judge Warden:

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The machinery & etc., was situate on N. E., cor. Pearl st. The premises contain about 1¾ acres. Assigned machinery of various kinds used in manufacturing locomotives and marine engines, shaftings, trip-hammers, 3 engines and boilers. The machinery and lathes are on stone foundations; their weights hold them down. They were scattered about the premises; some parts of the premises were pretty well filled up. The part on Pearl street was quite clear, it was used as a boiler yard. Assignees took possession of these things and kept them in all parts of the premises until the sale. This sale was in last September. All was not sold at once, I think. Assignees looked after the tools, & etc. Ludlow was at his office on Walnut street, and Warden was at the premises most of the time. They had a night-watchman, and I took care of it by day. I staid up in my office. I think some remnants of the property there now; can't say how much it would have cost to have removed machinery, etc.

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I don't remember whether I signed the chattel mortgage to Gibson. There was no express statement among our firm as to who should sign the mortgages. After consultation among the members of the firm, the mortgages were signed; it would be legal whoever signed them. The execution of these mortgages was known to all the firm and acquies'ed in by all of us, and they were made with the knowledge and consent of all. I don't distinctly recollect that I signed the Gibson mortgage. If I did sign it, I intended to sign it Robert Moore and Sons, and if I did not, it was a mere oversight on my part. I don't remember when I signed it, but think at Ludlow and Stanton's office, as they are witnesses to it. The transaction on the part of Gibson was for our accom'odation, and the note was used for the firm of Robert

Moore & Sons; can't state whether the $5,000 00 note was a renewal or not. He (Gibson) did renew paper for us, but can't state whether this $5,000 00 was a renewal, he had renewed for us for about a year. I sent circular to Harkness' heirs to meet me before this assignment, to effect a compromise to abate rent for a time, and give me power to sell lease in order that we could go on in business; but they would not abate one cent, but forced me into bankruptcy. I said, I think, if they would abate certain claims and give us power to sell lease, as we
63 could do with less room, in order that we might go on—I might have said that if they would abate the rent for 2 years, we could get others to extend their time; we were not behind at bank, but were with some of our hands.

By E. M. Johnson, esq.:

Had not suspended payment on March 8th, 1868. The previous note upon which Gibson had endorsed his name, matured before we suspended, and was paid by us.

DAVID GIBSON examined.

The chattel mortgage from Robert Moore and Sons to me was executed and delivered to me by Robert Moore, day of its date, or a few days after—I think, on the day of its date. I paid the note mentioned in the chattel mortgage when it matured, and the amount never has been paid repaid me; had no interest in the matter, except that of an accom'odation endorser. I believed them, Robert Moore & Sons, to be perfectly sound. I would not have endorsed it if I had known them to be insolvent. It was a note given to raise money to carry on their business; I was not aware that it was a renewal. The chattel mortgage was given in consideration of the endorsement, and I insisted upon its being given before I would endorse the note. I was not on any other paper at the time that I endorsed this note.

By R. King, esq.:

I think it was a single note for $6,000 that I was on. I repeated this note. This note was given, secured by mortgage, about the time of the maturity of previous note. I can and will produce the list of notes endorsed by me for Robert Moore & Sons. I received this mortgage at my office. I think I went to Stanton & Ludlow once, but did
64 not find them in. I think it probable that I made the affidavit at my office, and on day the mortgage was given to me. I think it more than likely that it was done at my office, but have no distinct recollection about it.

By Judge Warden:

Can't say why I did not file C mortgage on the day it was given; can't say whether I had any conversation with either of the Moores before I filed it; if I had, it was with Fred. Moore. There were reports flying about many parties failing, and I wanted to be secured.

By E. M. Johnson, esq.:

I do not pretend to be certain as to the date of the mortgage and the time when it was given. I was not notified by either of the Moores to put the mortgage on record.

C. M. POOR examined.

Am husband of one of the ladies who represent the lease-hold estates occupied by Robert Moore & Sons. The property and machin-

ery was in the hands *of the hands* of the assignees, Warden and Ludlow. When I saw the notice of the assignment, I called upon Mr. Ludlow, and told him I was one of the parties who collected the rent. I and others called on him for rent due May 1st. He said that they then had no funds, but when they came in possession of funds would pay rent. Ludlow and Warden occupied the premises. Ludlow said that he would not occupy all the property if it would not cost so much to move the property. Some time in March, 1868, I received the letter now produced, by mail, telling me to meet Robert Moore & Sons at their office March 17th, 1868; letter was of date March 11th. On 17th March I met them. Mr. R. Moore said that times were getting so hard
65 that they could not stand up under expenses; some creditors had been pushing them, and they could not go on unless we gave up back rent and relieved them for 2 years to come. We had a conversation there that must have lasted 2 hours. I asked him who was pushing him. He said that there were several of them, and they could not stand the pressure. We said that we could not accept his proposition, but would give him 10 days to see what his creditors would agree to. We said we would let him sub-let, but the rent was to be paid to us.

By Judge Warden:

Conversation between me and Ludlow was on first day notice of assignment was put in Gazette; never presented a bill to assignees—only made verbal demand. Ludlow said they were repairing locomotives, and all the money which came in was used to pay hands. He promised to pay rent; did not say that they would pay debts when they could. He did not do anything to prevent our forfeiting lease. Warden had as much possession of premises as Miles Greenwood had of his; have seen Mr. Warden there every time I went there. I didn't know where his place of business is, but every time I went there, at different times in the day, while assignees had possession, saw Mr. Warden there, at least a dozen times; never saw Robert Moore there, except on the day of sale.

A. LUDLOW examined.

Am one of the assignees of Robert Moore & Sons. I drafted chattel mortgage from Robert Moore & Sons to David Gibson. It was executed on the day of its date. Mr. Gibson was not present when it was executed.

By R. King, esq.:

66 Mortgage was given to Robert Moore to be given to David Gibson. I am quite clear that it was given on the day of its date.

By Judge Warden:

As Mr. Poor stated, he came to me and demanded considerable rent. I have no recollection of having positively promised to pay rent. We found Mr. Moore in full possession under the lease. The lease-hold was not assigned to us. We occupied premises sufficient to look after the property.

FREDERICK MOORE examined.

By Judge Warden:

One of firm of Robert Moore and Sons, and book-keeper of the firm. To the best of my recollection, I never had a conversation with David

Gibson as to his mortgage, or in regard to the position of the firm. I went to David Gibson about his endorsement, and he gave it as accom'odation to the firm; did not see him between 8th & 18th of March, to best of my knowledge; don't recollect having conversation with him for 2 weeks previous to assignment; did not send him any word, or write him word, or to any one in his employ, to put his mortgage on record. To best of my knowledge, all transaction between our firm and Gibson was made with father, (Robert Moore;) have no recollection of having seen Mr. Gaylord about his mortgage.

By R. King, esq.:

Don't recollect that Gibson's note was given as a renewal; got his endorsement on the note, and took up others; can't recollect whether this note was obtained for purpose of getting up another; suppose that when I got this note I took up another, but don't recollect anything about it. I have had a great deal of business to attend to,
67 and have not taxed my mind with it. When the thing was done and assignment made, I threw it all off my mind. I have no recollection about it, as I never made a bargain with Gibson as to how much he should endorse. Rent was charged to expense account. Mr. Poor & Woodmansee collected rent. See our letters marked D & E.

By E. M. Johnson, esq.:

Don't see any note of Gibson in our bill book. If Gibson had not taken up the note, we would have taken it up, as we were not insolvent when the previous note matured; had no contemplation of suspending on March 8th. The old note would have been taken up at the time of its maturity if we had *had* not got Gibson's endorsement. None of us considered ourselves insolvent at the time the other note was paid. In our bills-payable book of our firm I find note David Gibson, 60 days, due March 14–17, $6,000 00, discounted at Cent'l Nat'l Bank, paid. We had no agreement with Mr. Gibson. Bill book shows that a note for $6,000 00 was paid March 17th.

D. HENDERSON examined.

Am a notary public; took Mr. Gibson's affidavit to a mortgage by Robert Moore to him. A. S. Ludlow was with me; went at his request to Gibson's office. My recollection is that Ludlow had it with him. My books show that this was March 18th, A. D. 1868.

DAVID GIBSON recalled.

I never had any agreement with Robert Moore and Sons as to how much I should endorse, but never agreed to do more than $6,000, if I agreed to do that. In Feb'y, 1868, Robert Moore expected a contract for work in St. Louis, and I agreed to go on the bond for
68 $500,000 00. I had no idea that they were insolvent when I took the chattel mortgage.

The petition and journal entries of proceedings commenced September 15th, 1868, against said Robert Moore & Sons, in the district court of the United States for the southern district of Ohio, in bankruptcy, and the adjudication thereon declaring them bankrupts were also offered and read in evidence, and formal proof thereof waived by consent of all parties. So much of the ledger, journal, day book, cash book, and bill book of said Robert Moore & Sons as are hereafter

copied or attached were also offered in evidence, of which the following portions are to be taken as part hereof:

The following entries appear in the journal, Dr. interest, discount, & exchange, to cash:

Page 249, July 11th, 1867.	To 63 days' discount on our note favor	D. Gibson,	$6,000.	94	50
" " "	do.	"	"	"	T. Gaylord & Co.,	$10,000.	157	50
" 272, Sept. 10, 1867.	"	"	"	"	D. Gibson,	$6,000	93	00
" " "	"	"	"	"	T. Gaylord,	$10,000	157	50
" 298, Nov. 12, 1867.	"	"	"	"	D. Gibson,	$6,000.	94	50
" " "	"	"	"	"	T. Gaylord,	$10,000	157	50
" 317, Jan'y 14th, 1868.	"	"	"	"	"	$10,000	157	50
" " "	"	"	"	"	D. C.,	$6,000.	94	50
" 334, M'ch 17, 1868.	"	"	"	"	"	$6,000	81	00
" " "	"	"	"	T. Gaylord & Co.,	$10,000 .	157	50

The following entries appear in the cash book:

Page 262, July 11th, 1867.	Dr. cash to bills payable: am't of our note—		
" " "	favor D. Gibson at 60 d's date, disc't for $6,000.		
263, " " "	Cr. cash by 63 days' dis. on our note—		
" " " "	favor David Gibson	$94	50
" " "	do. do. note, Gaylord	157	50
69 Page 275, Sept. 10, 1867.	Cr. cash.		
	By dis. paid on notes to Gibson & Gaylord, (same as journal this date.)		
Page 285, Nov. 12, 1867.	" " " " " " " "		
" 293, Jan'y 14th, 1868.	" " " " " " " "		
" 301, M'ch 17, 1868.	" " " " " " " "		
302, " 20, "	Dr. cash, balance this date.....	$44	67
303, March 21, 1868.	Cr. cash, am't paid Ludlow & Warden	$44	67

The following entries appear in the bill book:

Date, July 11th, 1867, 60 days; Robert Moore & Sons' note, D. Gibson accom'odation, due Sept. 9–12, $6,000 00, payable at Cent. Nat'l B'k; paid; dis. by Cen. Nat.

Date, Sept. 10, '67, 60 days; Rob't Moore & Sons' note, favor D. Gibson; renewal of note due Sept. 12th; due Nov. 9–12; $6,000; payable at Cent. Nat'l B'k; paid; dis. by Cen. Nat.

Date, Nov. 12, '67, 60 days; Robert Moore & Sons' note, favor David Gibson, for account of David Gibson; due Jan'y 11–14th, 1868; $6,000; payable at Cent. Nat. B'k; paid; dis. Cent. Nat.

Date, Jan'y 14, 1868, 60 days; Robert Moore & Sons' note, favor of David Gibson; renewal note due January 14; due March 14–17; $6,000; payable at Cent. Nat. B'k; paid; dis. Cent. Nat.

Date, March 8, 1868, 60 days; Robert Moore & Sons' note, favor of David Gibson; accom'odation due May 7–10; $6,000; payable at Cent. Nat. Bank; dis. Cent.

The bill book also contains corresponding entries as to all the notes endorsed by Gaylord, Son & Co.

The lease by Anthony Harkness to Moore and Richardson, and assignment thereon by Richardson and Moore, was also offered in evidence, both annexed, marked Exhibit A.

The "expense acc't" and the account of "Estate of A. Harkness, dec'd," in the said books of Robert Moore & Sons, were also offered in evidence, and copies thereof hereto annexed, marked Exhibit B and Exhibit C.

David Gibson, by his counsel, then offered in evidence the
70 note and chattel mortgage hereto annexed, marked Exhibits O & P, proof of the execution of both which was waived and the certified copy of chattel mortgage hereto annexed received in lieu of the original by consent.

And no other testimony was given upon behalf of any of the parties to the cause, but the foregoing, in addition to the depositions on file and exhibits, was all the testimony given for any of said parties.

In authentication whereof this statement is signed by the presiding judge, and by him sealed, allowed, and ordered to be filed and made part of the record in this cause.

May 17, 1870.

N. H. SWAYNE, [SEAL.]
Asso. Jus. Sup. Court U. S.

71 *Exhibit A.*

Exhibit A, referred to in foregoing certified statement of evidence, is in the words and figures following, to wit:

This indenture, made this thirty-first day of January, in the year eighteen hundred and fifty-two, by and between Anthony Harkness, party of the first part, and Robert Moore and John G. Richardson, partners, party of the second part, witnesseth: That said Anthony Harkness, in consideration of the rents, covenants, and provisoes, hereinafter reserved, doth demise and let unto the said Robert Moore and John G. Richardson, partners, for the term of twenty years, from and after the date of these presents, all the following-described lots of land in the city of Cincinnati, county of Hamilton, and State of Ohio, to wit, the leasehold for 99 years, renewable forever, granted by Robert Richardson to Thomas and Reynolds, of lot numbered eight (8) in Symmes' subdivision, in the east part of Cincinnati, situate at the northwest corner of Pike and Front streets, except a parcel out of the northeast corner of said lot, measuring thirty (30) feet on Pike street and extending back the same width sixty (60) feet on Friendship alley, subject to the payment of the yearly rent of eight hundred dollars reserved by said lease and all the terms and conditions thereof, being the premises conveyed by Yeatman & Shields to said Harkness by deed recorded in book No. 127, page 316, in the recorder's office of Hamilton County, Ohio. Also, another lot on the north side of Front street, between Pike and Lawrence streets, in Cincinnati, bounded east by said first-mentioned lot, thence extending west on Front street about two hundred and twenty-nine (229) feet, and extending back north the same width about one hundred and fifty-five (155) feet to Friendship alley, being the premises conveyed to said Harkness by William Ruffins, by deed recorded in book 26, page 355, and Benjamins Stewart's deeds, recorded in book 30, page 197, book 33, page 363, and book 108, page 91, all in said recorder's office. Also, another lot on the south side of Congress street, between Pike and Lawrence streets, in Cincinnati, being lot No. eighteen (18) in said Symmes' subdivision, beginning about one hundred feet west of Pike street, thence extending west one hundred feet on Congress street, and extend-
72 ing back the same width southwardly to Friendship alley, being the premises conveyed by Nat. Wright and wife to said Harkness, by deed recorded in book 41, page 66, of said recorder's office, and all the buildings, improvements, rights, privileges, and appurtenances thereunto belonging, or in any wise appertaining, being the same premises whereon A. Harkness & Son heretofore carried on their foundry, &c., and also all the fixtures, machinery, engines, boilers, tools, patterns, and apparatus in or belonging to said establishment, to hold the said premises subject to the rent reserved by the lease of said lot first-mentioned and the terms and conditions of said lease, unto the said Robert Moore and John G. Richardson, partners, &c., for the term of twenty years,

commencing on the thirty-first day of January, A. D. 1852, they yielding and paying therefor every year, in addition to the rent reserved in said Richardson's lease, to said Anthony Harkness, his heirs and assigns, the yearly rent of six thousand dollars, payable quarter-yearly, in equal instalments of fifteen hundred dollars each, on the 1st day of May, August, November, and February, every year, the first being payable on the first day of May, A. D. 1852. And the said Robert Moore and John G. Richardson, partners, &c., covenant with said Anthony Harkness, his heirs and assigns, that they will pay him and them the said yearly rent of six thousand dollars in the manner and at the times above reserved; and that they will also, during all of said term, bear and pay the yearly rents reserved by said lease of Richardson to Thomas & Reynolds, and observe and perform all the covenants and articles thereof, so as to defend said lease and keep said Harkness, his heirs and assigns, harmless and indemnified of all loss or charges thereon; and they will also, at all times during said term, bear and pay in due time, all taxes, levies, or assessments, of every nature, general or special, which shall or may lawfully be taxed, levied, or assessed upon the said premises, or any part thereof, or upon said Anthony Harkness in respect thereof; and it is mutually covenanted and agreed upon by and between said parties of the first part and second part, that an inventory and assessment of the present value of all the buildings, and also another of all
73 fixtures, machinery, engines, boilers, tools, apparatus, and moveable improvements whatsoever, hereby demised, (except patterns,) shall forthwith be made by said parties and endorsed hereon; or if said parties cannot agree upon said valuation, then by three disinterested persons, one to be chosen by each of said two parties and a third by the two so chosen, whose appraisement shall be final and endorsed hereon; and said party of the second part covenant with said party of the first part, that if at the end or sooner termination of this lease, the buildings upon said premises shall not be equal to their present value so assessed, the said party of the second part shall pay the difference to said Anthony Harkness, his heirs or assigns; and for all said fixtures, machinery, engines, boilers, tools, apparatus, and other moveable appurtenances, said party of the second part further agree to pay said Anthony Harkness, his heirs or assigns, the full value thereof, so assessed as aforesaid, in four equal payments, at 16, 17, 18, & 19 years from the date of these presents, and the same and additions thereto shall become the property of the party of the second part; and said party of the second part further covenant that they will at all times during said term, keep said buildings, fixtures, machinery, engines, boilers, tools, and premises generally, in as good supply, order, and condition, as they now are, and that they will not commit or suffer any waste thereof, and at the end or other sooner determination of said term, will surrender up said real estate and buildings in as good order and condition as they now are, to said Anthony Harkness or his assigns; and said Anthony Harkness covenants with said party of the second part, that if at the end or other sooner determination of said term the value of the buildings on said premises shall be greater than their present value so assessed, he, his heirs or assigns, will pay the difference to the said party of the second part; and furthermore, that said party of the second part, paying all the rents and performing all the covenants hereby on their part to be performed and paid, shall and may, peaceably and quietly, occupy, use, and enjoy, all and singular the premises hereby demised, with the appurtenances
74 during said term, without any molestation of the said Anthony Harkness, or any other person lawfully claiming the same; pro-

vided, nevertheless, that for the due payment and performance of all rents, taxes, articles, and conditions hereby stipulated to be paid and observed by the said party of the second part, said Anthony Harkness, his heirs and assigns, shall at all times have the first lien on the premises and all the additions and improvements thereupon, preferable over all other liens; and that if said party of the second part shall refuse or fail to pay said instalments of rent or observe and perform any of the terms and articles of this lease on their part; or if said party of the second part shall in any manner assign, underlease, or part with the possession or occupation of said premises, or any part thereof, except one of said partners to the other, or if said premises demised hereby, or any part thereof, shall at any time during said term be attached, levied upon, taken, or molested, by any process of law, against said parties of the second part, then, or in any such case, it shall or may be lawful for said party of the first part, his heirs or assigns, unto and upon said premises to reënter and the same and every part thereof have again, retain, and enjoy as in his first estate, and avoid this lease, anything herein contained to the contrary notwithstanding.

In witness whereof the said parties have hereunto set their hands and seals on the day and year first aforesaid, in duplicate.

ANTHONY HARKNESS. [SEAL.]
ROBERT MOORE. [SEAL.]
JOHN G. RICHARDSON. [SEAL.]

Signed, sealed, acknowledged, and delivered in presence of us—
JOHN W. HERRON.
SAM'L S. CARPENTER.

THE STATE OF OHIO, *Hamilton County, ss:*

Before the undersigned, a notary public in and for said county, personally came, this 25th day of July, A. D. 1853, Anthony Harkness, Robert Moore, and John G. Richardson, the parties to the foregoing indenture, and acknowledged the signing and sealing of the same
75 by them, respectively, to be their and each of their voluntary act and deed, for the uses and purposes therein mentioned.

Witness my hand and notarial seal.

{ NOTARIAL SEAL, HAMILTON COUNTY, OHIO. } SAM'L S. CARPENTER,
Notary Public, H. C., O.

[United States internal revenue, twenty dollars—conveyance—canceled March 17, 1869. R. M.]

[U. S. inter. revenue—charter-party—ten dollars, canceled March 17, 1869. R. M.]

(Indorsed:) Lease—Anthony Harkness to Robert Moore & John G. Richardson.

Rec'd 25 July, 1853. Recorded in lease-book No. 9, page 214.
W'M HOON,
Recorder Ham. Co., Ohio.

We hereby certify that the valuations or assessments provided for in the within lease have been made as therein provided, and that the present value of the buildings and fixtures on said premises, according to said assessment, is seventeen thousand three hundred and twenty-seven (17,327$) dollars; and that the present value of the tools, machinery, &c.,

for which four notes, at 16, 17, 18, & 19 years are this day given, is thirty thousand five hundred and sixty-two dollars and fifty cents, ($30,562 50.)

ANTHONY HARKNESS.
ROBERT MOORE.
JOHN G. RICHARDSON.

[United States inter. revenue, three dollars—manifest—canceled March 17, 1869.—R. M.]

For the sum of fourteen thousand two hundred and fifty (14,250) dollars, paid and to be paid as in the programme, marked "B," of this tenor and date, (which see,) I have assigned, and do by these presents assign and convey, my entire interest in this lease, and all that is included thereby, to Robert Moore, now joint owner of this lease, and of the firm of Moore & Richardson.

In testimony whereof I have set my hand and seal this 13th day of Feb'y, 1865.

JOHN G. RICHARDSON. [SEAL.]

Witness—
FRED. R. MOORE.
AUG. MOORE.

[United States inter. revenue, two dollars—conveyance—canceled Feb. 13, '65.—J. G. R.]

[United States inter. revenue, two dollars—conveyance—canceled Feb. 13th, 1865.—J. G. R.]

(Written across the face:) Entered March 23, 1868.

THO'S L. YOUNG,
Recorder Ham. Co., Ohio.

(Written across the face in red ink, on folio 71:)

MARCH 17, 1869.

In consideration of one ($1 00) dollar, and by an order of the district court of the U. S. in the matter of Robert Moore & Son, in bankruptcy, case No. 833, I hereby assign, transfer, and set over to A. S. Ludlow & Americus Warden, assignees in bankruptcy, all my right, title, and interest in the unexpired term of this lease.

ROBERT MOORE.

Attest:
E. EDWARDS.
J. B. EATON.

STATE OF OHIO, *Hamilton Co., ss:*

Be it remembered that, on the 17th day of March, 1869, personally appeared before me, a notary public within & for said county, the above-named Robert Moore, & acknowledged the signing of the above assignment to be his voluntary act & deed, for the uses & purposes therein mentioned.

In witness whereof I hereunto set my hand & seal of office the 17th day of March, 1869.

{ NOTARIAL SEAL, HAMILTON CO., O. }

EDWIN EDWARDS,
Notary Public.

EXHIBITS D & E.

Exhibits D & E, referred to in the aforesaid certified statement of evidence, are in the words and figures following to wit:

Copies of letters by Robert Moore & Sons, referred to and offered in testimony of C. M. Poor and Frederick Moore.

76 EXHIBIT D.

CINCINNATI, *May 22d*, 1867.

D. W. WOODMANSEE, Esq.

DEAR SIR: Your letter of yesterday is received. Owing to various causes beyond our control, but more particularly to the entire prostration of business in our line, has put it out of our power to meet our obligations for rent as heretofore.

We cannot fix a day for payment, but will advise you just as soon as it is in our power to do so.

Respectfully,

ROBERT MOORE & SONS.

EXHIBIT E.

OFFICE OF CINCINNATI LOCOMOTIVE WORKS,
Cincinnati, Aug. 6th, 1867.

D. W. WOODMANSEE, Esq.,
Dayton, O.

DEAR SIR: The express co. this day presented your bill for collection which we were unable to meet. As yet there is no business doing generally, but the merchants expect business to change as soon as the crops move. We are unable to sell anything we have, or collect debts; therefore we trust that you will be easy with us, as you do not feel the want of your dues more than we regret that we are unable to meet them promptly, and we would feel thankful for leniency.

Very respectfully,

ROB'T MOORE & SONS.

Exhibits B & C, referred to in aforesaid certified statement of evidence, are in the words and figures following, to wit:

77 EXHIBIT B.

Extracts from journal and ledger of Robert Moore & Sons.

EXHIBIT B.—*Expense account.*

The new journal opened 31st March, 1866, contains the following entries posted in the ledger under the head of "expense:"

May 31, 1866.	Expense, Dr.	
P. 40.	To est. of A. Harkness, dec'd. Rent of shop from Feb'y 1st to date, 1 q'r, @ $6,000 per ann.....	$1,500 00
Aug. 31, 1866.	Expense, Dr.	
P. 92.	To est. of A. Harkness, dec'd. Rent of shop from May 1st to date, 1 q'r, a $6,000 per ann.....	$1,500 00
Nov. 30, 1866.	Expense, Dr.	
P. 140.	To est. of A. Harkness, dec'd. Rent of shop from Aug. 1st to date, 1 q'r, a $6,000 per ann.....	$1,500 00

Feb'y 28, 1867. Expense, Dr.
P. 189. To est. A. Harkness, dec'd.
Rent of shop from Jan'y 1st to date..... $500 00

May 3, 1867. Expense, Dr.
P. 223. To Mary Harkness.
$\frac{1}{3}$ of one q'r's rent of shop to date..... $500 00

Expense, Dr.
To est. A. Harkness, dec'd.
$\frac{2}{3}$d of one q'r's rent of shop to date at $1,500 per an. (the other $\frac{1}{3}$ in this instance was credited to a'c of Mary H.) $1,000 00

78 Aug. 31, 1867. Expense, Dr.
P. 260. To Mary Harkness.
$\frac{1}{3}$d of one quarter's rent of shop from May 31st to date *a* $1,500..... ..... $500 00

Nov. 30, 1867. Expense, Dr.
P. 294. To Mary Harkness.
$\frac{1}{3}$d of one q'r's rent of shop from Aug. 1, to date *a* $6,000 per ann..... $500 00

Dec. 31, 1867. Expense, Dr.
P. 305. To est. A. Harkness, dec'd.
$\frac{2}{3}$ rent of shop from May 1 to Nov. 1, (the other $\frac{1}{3}$ is cred. to Mary Harkness,) 6 mos., *a* $500 $2,000 00
Whole, Dr., from Nov. 1 to date 2 mos. *a* $500..... $1,000 00
$3,000 00

By the ledger (p. 314 "expense,") it appears that similar debits of expense a'c for rent were made in the previous journal, (now lost,) as follows:

Feb'y 28, 1865.	P. 432.....	$500 00
May 31, 1865.	P. 478.....	$1,500 00
Aug. 1, 1865.	P. 514.....	$1,500 00
Nov. 1, 1865.	P. 559.....	$1,500 00

EXHIBIT C.

EXHIBIT C.—*Estate of A. Harkness, dec'd.*

The new journal, opened March 31, 1866, contains the following entries, posted in the ledger under this head:

March 23, 1866. Estate of A. Harkness, dec'd, Dr.
P. 17. To cash on acc't p'd Chas. Gano..... $150 00

79 May 2, 1866. Estate of A. Harkness, dec'd, Dr.
P. 46. C. L. Gano in full of bal. $\frac{1}{5}$ rent $350
D. W. Woodmansee in full of $\frac{1}{21}$ " $357 14
Lou. H. Poor, " " " $\frac{1}{21}$ " 71 43
Alice M. King " " " $\frac{1}{21}$ " 71 43
Mary Harkness " " " $\frac{2}{3}$ " 500
$1,350 00

July 31, 1866. Est. of A. Harkness, dec'd.
P. 75. P'd to Ch. Gano on a'c rent..... 150 00
" " do. in full of $\frac{1}{3}$ do 350 00

Aug. 21, 1866.	Est. of A. Harkness, dec'd.				
P. 91.	D. W. Woodmansee in full $\frac{5}{21}$ rent		357 14		
	Alice M. King " " $\frac{1}{21}$ "		71 43		
	Lou. H. Poor " " $\frac{1}{21}$ "		71 43		
	Mary Harkness " " $\frac{1}{3}$ "		500 00		
					$1,000 00
Sept. 27, 1866.	Est. A. Harkness, dec'd.				
P. 108.	C. L. Gano on a'c $\frac{1}{3}$ rent due Nov. 1				200 00
Nov. 5, 1866.	Est. A. Harkness, dec'd.				
P. 142.	D. W. Woodmansee in full $\frac{5}{21}$ rent.		357 14		
	Alice M. Lemon " " $\frac{1}{21}$ "		71 43		
	Lou. H. Poor $\frac{1}{21}$ "		71 43		
	C. L. Gano, balance, $\frac{7}{21}$ "		300		
	Mary Harkness, in full $\frac{7}{21}$ "		500		
					1,300 00
Dec. 24, 1866.	Est. A. Harkness, dec'd.				
P. 167.	P'd Ch. Gano on a'c rent due Feb. 1 prox.				200 00
Feb. 28, 1867.	Est. A. Harkness, dec'd.				
P. 192.	P'd Ch. Gano in full of balance of				
	$\frac{1}{3}$ rent (500).....		300 00		
	P'd D. W. Woodmansee in full $\frac{4}{21}$ rent		285 71		
	Mary Harkness " " $\frac{1}{3}$ "		500 00		
	A. M. King " " $\frac{1}{21}$ "		71 43		
	Lou. H. Poor " " $\frac{1}{21}$ "		71 43		
	Alice M. Lemon " " $\frac{1}{21}$ "		71 43		
					1,300 00

80 Cash book contains credits to cash for each of the foregoing payments as above.

March 16, 1867.	Est. A. Harkness, dec'd.	
P. 199.	To bills payable. Note at 6 mos. date, favor A. H. King for $\frac{1}{21}$ rent of shop due May 1, Aug. 1 & Nov. 1, '67, and Feb. 1st, 1868.	285 72
May 29, 1867.	Est. A. Harkness, dec'd. To bills payable. Note *a* 90 days date, favor of C. L. Gano for	500 00
Aug. 6, 1867.	Est. A. Harkness, dec'd, Dr.	
P. 261.	To bills payable. Note *a* 60 days date, favor C. L. Gano	500 00

EXHIBIT "O."

Exhibit O, referred to in aforesaid certified statement of evidence, is in the words and figures following, to wit:

$6,000.] CINCINNATI, *March 8th*, 1868.

Sixty days after date, we promise to pay to the order of David Gibson, six thousand $\frac{}{100}$ dollars, payable at the Central National Bank, Cincinnati, O. Value received.

No. Due

ROBERT MOORE & SONS.

[United States inter. revenue—three dollars—manifest—canceled. Central National Bank, Mar. 17, 1868. Cin., O.]

Upon the back of which said note are the words and figures following,

to wit: David Gibson. Robert Moore & Sons. Protested for non-payment, May 9, '68. Cha's H. Stephens, Not. Pub.

UNITED STATES OF AMERICA, [No. 688.
State of Ohio:

By this public instrument of protest, be it known that, on Saturday, the 9 day of May, in the year of our Lord one thousand eight hundred and sixty-eight, I, Cha's H. Stephens, a notary public, for the county of Hamilton, in the State of Ohio, by lawful authority duly com-
81 missioned and sworn, living in Cincinnati, in the county and State aforesaid, at the request of the Central Nat. B'k, Cin'ti, holder of the original note hereunto attached, at the close of banking hours, presented the same at the Central Nat. B'k, Cin'ti, and demanded payment thereof, which was refused; I then protested the same for non-payment, and notified the endorser, David Gibson, of its non-payment, on the afternoon of May 9, '68.

Whereupon I, the said notary, upon the authority aforesaid, have protested, and do hereby solemnly protest, as well against the maker of the said note as against all other persons whom it doth or may concern, for exchange, reëxchange, and all costs, charges, damages, and interests, suffered or to be suffered, for the want of payment thereof.

Thus done and protested at Cincinnati, the day and year above written.

And I certify that I have no interest in said note.

In testimony whereof I grant these presents under my signature and the impress of my notarial seal of office.

{ NOTARIAL SEAL } CHA'S H. STEPHENS,
{ HAMILTON COUNTY, O. } *Notary Public.*

[United States inter. revenue—twenty-five cents—certificate—canceled May 9, 1868. John H. Haycock, for Cha's H. Stephens.]

EXHIBIT P.

Exhibit P, referred to in aforesaid certified statement of evidence, is in the words and figures following, to wit:

Know all men by these presents that Robert Moore, Arthur G. Moore, Frederick R. Moore, Augustus Moore, & Hamilton Moore, a firm doing business in Cincinnati, Ohio, under the firm-name of Robert Moore & Sons, in consideration of six thousand (6,000 00) dollars, to them paid by David Gibson, of the same place, the receipt of which is hereby acknowledged, do hereby bargain, sell, and convey to the said David Gibson, and assigns, the goods and chattels described in the schedule hereunto annexed: To have and to hold the same, to the use of the said David Gibson, his executors, administrators, and assigns: Pro-
82 vided, nevertheless, that if the said Robert Moore & Sons shall pay or cause to be paid unto the said David Gibson, his heirs or assigns, their certain promissory note of even date herewith, payable in sixty (60) days from the date hereof, for the sum of six thousand ($6,000 00) dollars, at the Central National Bank of Cincinnati, Ohio, which note is payable to the order of said David Gibson, then this conveyance shall be void; otherwise to be and remain in full force.

In witness whereof, the said Robert Moore & Sons, by Robert Moore, one of the firm above-named, have hereunto set their hand and seal, this eighth day of March, in the year of our Lord one thousand eight hundred and sixty-eight.

ROBERT MOORE. [SEAL.]

Signed, sealed, and acknowledged in presence of us—
WILLIAM STANTON.
A. S. LUDLOW.

[Stamped $6 00. U. S. int. rev., canceled.]

Statement of claim.

STATE OF OHIO,
County of Hamilton, ss:

David Gibson, mortgagee named in this mortgage, being duly sworn, makes oath and says that his claim against Robert Moore & Sons, mortgagor, of which a true statement is hereto annexed, amounts to the sum of six thousand ($6,000 00) dollars, and that said claim is just and unpaid.

DAVID GIBSON.

Sworn to and subscribed before me, a notary public, in and for said county, this 18th day of March, A. D. 1868.

[N. P. SEAL.] DANIEL HENDERSON,
Notary Public, Ham. Co., Ohio.

Schedule.

Machinery, engines, boilers, machine tools, line shafting, pat-
83 terns, & all office furniture owned and used by said Robert Moore & Sons, in their establishment, known as the "Cincinnati Locomotive Works," at the northwest corner of Pike & Front streets, in Cincinnati, Ohio.

THE STATE OF OHIO,
Hamilton County, ss:

I, Thomas L. Young, recorder of the county aforesaid, do hereby certify, that the foregoing is a correct copy of a chattel mortgage, with schedule annexed, from Robert Moore & Sons to David Gibson, as received and filed March 18, 1868, at 12 o'clock m., in the recorder's office of Hamilton County, Ohio.

Witness my hand and official seal this 10th day of June, A. D. 1868.

{ RECORDER'S OFFICE, HAMILTON COUNTY, O. } THO'S L. YOUNG, *Recorder.*

[U. S. inter. rev., five cents—certificate—canceled June 10. Young.]

Upon which said Exhibit P is endorsed the words and figures following, to wit:

Copy. Chattel mortgage. From Robert Moore & Sons to David Gibson. Received and filed March 18, 1868, at 12 o'clock m. Tho's L. Young, recorder.

On the thirtieth day of March, in the year of our Lord one thousand eight hundred and sixty-nine, there was filed in the clerk's office of said court, the deposition of George B. Bradley, in the foregoing case, and referred to in aforesaid certified statement of evidence, which said deposition is in the words and figures following, to wit:

Deposition of Geo. B. Bradley.

Circuit court of the United States, southern district of Ohio.

THE STATE OF , *County, ss:*

AMERICUS WARDEN AND AUGUSTUS S. LUDLOW, complainants, *vs.* T. G. GAYLORD ET ALS., RESPONDENTS. } No. 1081.

84 The complainants & cross-petitioners will take notice that, on Tuesday, the (2) second day of March, A. D. 1869, the cross-petitioners & respondents, Gaylord, Son & Co., above-named, will take the depositions of George B. Bradley, and sundry witnesses, to be used as evidence on the trial of the above cause, at the law office of Perry & Jenney, northwest corner of Third and Main streets, Cincinnati, in the county of Hamilton, in the State of Ohio, between the hours of eight o'clock a. m., and six o'clock, p. m., of said day, and that the taking of the same will be adjourned from day to day, between the same hours, until they are completed.

PERRY & JENNEY,
Attorneys for Gaylord, Son & Co.,
Respondents & Cross-petitioners.

Service of the above notice is acknowledged, and proof of the official character of the officer before whom the said depositions may be taken, is by agreement waived; also, all exceptions in regard to time.

EGLY & WARDEN,
For Plaintiffs.
HOADLEY, JACKSON & JOHNSON,
Att'ys for Gibson.
KING, THOMPSON & AVERY,
For Gano & als.

STATE OF OHIO, *Hamilton County, ss:*

Herbert Jenney, being duly sworn, states that, on Saturday, the 27th day of February, A. D. 1869, he served Thomas J. Henderson, the attorney of record for Mary Harkness, respondent and cross-petitioner, with a true copy of the within notice.

HERBERT JENNEY.

Sworn to before me and subscribed in my presence this 27th day of February, A. D. 1869.

{ NOTARIAL SEAL HAMILTON CO., O. }

LUMAN ALLEN,
Notary Public, Hamilton County, Ohio.

85 Deposition of the witnesses, taken before me, Luman Allen, a notary public within and for Hamilton County, State of Ohio, on the 22nd day of March, 1869, between the hours of 8 o'clock a. m. and 6 o'clock p. m., at the office of Perry & Jenny, on the northwest cor. of Main and Third streets, Cincinnati, Ohio, pursuant to the annexed notice, to be read in evidence on behalf of Gaylord, Son & Co., respondents and cross-petitioners in a case pending in the U. S. c't c't for the southern dist. of Ohio, wherein A. S. Ludlow et al. are complainants, and said Gaylord, Son & Co., are respondents.

GEO. B. BRADLEY, of lawful age, being by me first duly cautioned, examined, and solemnly sworn, deposes and says in answer to—

First int. State your name, place of residence, how you were engaged during the year of '67 and the year '68, and how long you expect to remain in Cincinnati?

Answer 1. My name is George B. Bradley; my residence is Cincinnati; during the year 1867 & 1868 I was book-keeper for Gaylord, Son & Co., a firm doing business in Cincinnati; I expect to remain in Cincinnati but a few days.

2nd ques. State what, if anything, you know concerning an arrangement made between said Gaylord, Son & Co., and the firm of Robert Moore & Sons, of Cincinnati, Ohio, as to said Gaylord, Son & Co., endorsing the notes of said Robert Moore & Sons.

2nd ans. The firm of Robert Moore & Sons of Cincinnati, Ohio, consisted of Robert Moore, Arthur G. Moore, Hamilton Moore, Frederick R. Moore, and Augustus Moore. Frederick R. Moore, of said firm of Robert Moore & Sons, had a conversation with Thomas G. Gaylord, of said firm of Gaylord, Son & Co., in which he requested said T. G. Gaylord to endorse the paper of Robert Moore & Sons, and desired
86 the said T. G. Gaylord to do so to the amount of twenty thousand ($20,000 00.) This conversation I heard, and afterwards said Thomas G. Gaylord spoke to me in reference to the same, and requested me to ascertain the standing at that time of Robert Moore & Sons, which I accordingly did, by special inquiries, and learned that said firm of Robert Moore & Sons stood number one as to integrity and honesty and attention to business; that their credit was good, but that they possessed moderate means. I reported these facts to Thomas G. Gaylord, and he afterwards told me that he had concluded to endorse for Robert Moore & Sons, but that he did not think he would endorse for as much as twenty thousand ($20,000 00) dollars, although he might do so. He afterwards requested me to endorse a note of Robert Moore & Sons, and handed me a chattel mortgage of said Robert Moore & Sons to said Gaylord, Son & Co., which he told me to deposit in the safe, (of which I attach a copy, marked Exhibit "A," and make the same a part of my deposition.) I endorsed notes of Robert Moore & Sons to the amount of seventeen thousand ($17,000 00) dollars, and four hundred ($400 00) dollars.

(Counsel for Mrs. Mary Harkness, and counsel for Gano & wife, and for Poor & others, heirs of Maria King, here appear & object to the foregoing answer as hearsay & irrelevant, and conversations between witness & T. G. Gaylord.)

3rd ques. State whether the said Robert Moore & Sons agreed to give to the said Gaylord, Son & Co., any security for said endorsements, & if so, what security?

Ans. They agreed to give a chattel mortgage, of which Exhibit "A" is a copy.

4 ques. Please furnish and attach to your deposition copies of the notes you have before spoken of, endorsed by you for the said Gaylord, Son & Co., & made by said Robert Moore & Sons.

87 Ans. These are the copies of the last notes, that is, the last renewals of notes previously given; I attach them to my deposition & mark the same Exhibits B, C, D, E.

5th ques. State by whom the originals of said notes were paid.

Ans. I paid them for said Gaylord, Son & Co.

6th ques. State whether you, on behalf of Gaylord, Son & Co., ever left for record the original of the mortgage of which Exhibit "A" is a copy, and if not, state why you did not leave the same at the proper office for record.

(Obj. by same counsel.)

Ans. I did not, because when I took it to an attorney to certify to the affidavit written at the bottom thereof, he objected to the manner in which the mortgage was drawn up.

7 ques. State whether any other mortgage was given by said Robert Moore & Sons to said Gaylord, Son & Co.; and if yea, attach to your deposition a copy of the same.

Ans. I obtained from Robert Moore & Sons and filed in the recorder's office on the 18th day of March, 1868, a mortgage, of which this is a copy, and I attach the same to my deposition, and mark it Exhibit F. The mortgage is dated March 17th, 1868.

8 ques. State whether upon the giving of this last mortgage, the first mortgage you have spoken of was surrendered to Robert Moore & Sons.

Ans. It was.

88 9th ques. State, if you know, what was the standing of the firm of Rob't Moore & Sons at the time this last mortgage was given.

Ans. I made inquiry, and received a report substantially the same as the one formerly given. I was told that they were in good standing; were considered men of integrity & attentive to business, and possessed of moderate means.

10th ques. State whether any note made by Rob't Moore & Sons was endorsed by you for said Gaylord, Son & Co., on the day when said last mortgage was given.

Ans. I endorsed a note for ten thousand ($10,000) dollars, on the 17th day of March, 1868. This is also the date of the mortgage.

11th ques. State, if you can, the consideration of the endorsement of this and the notes previously mentioned by you.

Ans. Frederick R. Moore said to me that they would give us their trade of Rob't Moore & Sons—that is, they would buy iron of us (Gaylord, Son & Co.)

12th ques. State what the mortgage had to do with the endorsements.

Ans. This mortgage was given as security for the said endorsements.

13th ques. State whether the giving of this last mortgage had any connection with the endorsement of the ten-thousand-dollar note, and if so, what.

89 Ans. It was part of the consideration.

14th ques. State whether the said firm of Rob't Moore & Sons had been customers of Gaylord, Son & Co., previous to their endorsing the notes aforesaid.

Ans. They had.

15th ques. State what representations were made to you by any member of the firm of Rob't Moore & Sons at the time the said first mortgage was given, and at the time the last mortgage was given in place of the first.

Ans. Frederick R. Moore told me at the time of the giving of the first mortgage that the firm of Rob't Moore & Sons was solvent, and that they expected to do a large business. At the time of the giving of the mortgage, dated March 17th, '68, Rob't Moore, of said firm of Rob't Moore & Sons, stated that they had at their machine shops property that was worth seventy thousand ($70,000 00) dollars, and that they had sufficient to pay their debts; that he considered they were solvent.

Cross-examination:

(Counsel for Gano & wife, & for Maria King's heirs, not waiving their exceptions aforesaid, cross-examine.)

1. When did Messrs. Gaylord, Son & Co., begin endorsing the paper of Robert Moore & Sons?

1 Ans. I think it was in January; I think about the time of the giving of the first mortgage.

2. Had they not endorsed for Moore & Sons before that mortgage was made?

Ans. I could not state positively without referring to the books.

3. Can you, by referring to the books and papers of Messrs. Gaylord, Son & Co., make a statement of the entire line of notes and other
90 paper which they endorsed for Moore & Sons?

Ans. The books will show; I can make a statement from the books & papers?

4. Will you please make a complete, continuous statement of the same, from the beginning, and annex it to this deposition?

Ans. I will furnish the statement, and attach it to this, my deposition.

5. From whom did you receive the mortgage, dated March 17th, 1868, which you annex as Exhibit F?

Ans. It was handed to me by Mr. Augustus S. Ludlow, the attorney. It was finally fixed up in his office in the presence of Mr. Challen, Mr. Arthur G. Moore, Mr. Stanton, and Mr. Ludlow.

6. By whom was it drawn up, and when?

Ans. Mr. Challen drew it up, & I think Mr. Ludlow made an objection to some part of it, and it was changed in consequence of this objection. This was on the 18th day of March, 1868, the day on which the mortgage was filed.

(The witness here proceeded to state that "the execution of this mortgage, dated March 17th, 1868, was delayed one day in consequence of my not being able to see Robert Moore & Sons. I make this statement because the mortgage is dated the 17th of March, 1868, whereas it was really executed on the 18th day of March, as I proceeded to show."

(To which last paragraph the counsel cross-examining excepts as not responsive.)

7. For whom was Mr. Ludlow acting on this occasion?

Ans. I understood him to be acting as attorney for Rob't Moore & Sons.

8. You have mentioned, in your testimony-in-chief, that you made inquiry as to the standing of Robert Moore & Sons; please name the parties to whom you applied.

Ans. The mercantile agency of R. G. Dunn & Co., on both occasions. I think I made inquiries elsewhere, but am not able to state certainly; I cannot specify any other persons.

91 Further taking of these depositions postponed by adjournment until to-morrow, (Wednesday,) at 3 o'clock, p. m.

March 2, '69.

LUMAN ALLEN, *Not. Pub.*

The further taking of these depositions hereby resumed, pursuant to above adjournment, this 3rd day of March, '69.

LUMAN ALLEN, *Not. Pub.*

Mr.

The witness, in answer to cross-question number 4 of this deposition,

put yesterday, now produced the paper hereto annexed, & marked Exhibit G, desires the same to be attached to this deposition, and says:

This paper contains a statement of the notes endorsed by Gaylord, Son & Co., as taken from their bill-book, beginning at May 8th, 1867. The renewal of the note for ten thousand dollars was made every sixty days until March 17th, 1868, of which note a copy is hereto annexed, and marked B.

9. Were these notes mentioned in said Exhibit G the only paper of Robert Moore & Sons which was endorsed or given by Gaylord, Son & Co., for them?

Ans. These notes are all that were endorsed by Gaylord, Son & Co., for Robert Moore & Sons' accom'odation.

10. State, if you know, where or by whom the paper so endorsed was discounted, and to whom the proceeds were paid.

Ans. I could not say; I do not know.

11. By whom was the discounting of said paper managed, and who arranged the renewals?

Ans. By Robert Moore & Sons; I think Frederick R. Moore was the one who attended to that part of their business.

12. You have stated that Gaylord, Son & Co., paid the last renewal of each of said notes; to whom did they make payment of each?

92 Ans. The note for ten thousand dollars was paid at the Central National Bank of Cincinnati; the note for two thousand dollars was also paid at the Central National Bank; the note for five thousand dollars was paid at Evans & Co.'s Bank. The note for four hundred was given by Robert Moore & Sons to Gaylord, Son & Co., in payment for iron, and was not accom'odation paper.

Reëxamination by plaintiff's counsel resumed:

1st ques. In answer to second direct interrogatory you have stated that the firm of Robert Moore and Sons had a conversation with Thomas G. Gaylord, of the firm of Gaylord, Son & Co.; state, as near as you can, when and where that conversation was held.

Ans. It was in Gaylord, Son & Co.'s office, 92 Broadway, to the best of my recollection, a few days previous to January 27th, 1868, the date of the mortgage, marked Exhibit "A," and was before Gaylord, Son & Co., endorsed the note for Robert Moore & Sons, dated January 23rd, 1868, for five thousand dollars. The conversation referred to was with Frederick R. Moore.

2nd ques. In interrogatories 10 and 11 you are asked who discounted these notes after they were endorsed; state what you did with them after you endorsed them.

Ans. I handed them to Robert Moore and Sons; I think to Frederick R. Moore, of the said firm.

GEO. B. BRADLEY.

Exhibit A to deposition of G. B. Bradley.

Exhibit A, referred to in foregoing deposition of Geo. B. Bradley, and attached thereto, is in the words and figures following, to wit:

Know all men by these presents that Robert Moore & Sons, a firm doing business in Cincinnati, Ohio, consisting of Robert Moore, Arthur G. Moore, Hamilton Moore, Fred. R. Moore, and Augustus Moore, in consideration of twenty thousand ($20,000 00) dollars to them paid

93 by Gaylord, Son & Co., of the same place, doing business at No. 90 & 92 Broadway, the receipt of which is hereby acknowledged,

do hereby bargain, sell, and convey to the said Gaylord, Son & Co., and assigns, the goods and chattels described in the schedule hereunto annexed, to have and to hold the same to the use of the said Gaylord, Son & Co., their executors, administrators, and assigns.

Provided, nevertheless, that whereas the said Gaylord, Son & Co., have endorsed or become security on the notes of said Robert Moore & Sons in the sum of twenty thousand ($20,000 00) dollars, and have also agreed to renew such endorsement from time to time as the said notes or any one of them shall become due, and it shall be necessary to renew the same for a longer time, but in no case are such endorsements to be, in the aggregate, more than said sum of twenty thousand ($20,000 00) dollars. Now if the said Robert Moore & Sons, shall keep and save said Gaylord, Son & Co., harmless from any costs, damages or loss arising from or out of such endorsement, then this conveyance shall be void; otherwise to be and remain in full force.

In witness whereof, the said Robert Moore & Sons, by Frederick A. Moore, have hereunto set their hand and seal, this twenty-seventh day of January, in the year of our Lord one thousand eight hundred and sixty-eight.

(Erased) ROBERT MOORE & SONS, [SEAL.]
(Erased) By F. R. MOORE.

Signed, sealed, and acknowledged in presence of us—
(Erased) J. B. EATON.
(Erased) A. S. LUDLOW.

Statement of claim.

(See act April 11, 1863, Ohio Laws, vol. 60, p. 77.)

STATE OF OHIO,
County of Hamilton, ss:

Gaylord, Son & Co., by , mortgagee, named in this mortgage, being duly sworn, make oath and say, that their
94 claim against Robert Moore & Sons, mortgagor, of which a true statement is hereto annexed, amounts to the sum of twenty thousand, ($20,000,) and that said claim is just and unpaid.

Sworn to and subscribed before me, a in and for said county, this day of A. D., 186 .

Schedule.

Machinery, engines, boilers, machine tools, line-shafting, patterns, and all stock in trade owned by said Robert Moore & Sons, and used and held by them in their establishment, known as the "Cincinnati Locomotive Works" at the northwest corner of Pike and Front streets, Cincinnati, Ohio.

Exhibit B to dep'n of G. B. Bradley.

Exhibit B, referred to in aforesaid deposition of G. B. Bradley and annexed thereto, is in the words and figures following, to wit:

$10,000 00. CINCINNATI, *March* 17, 1868.

Sixty days after date we promise to pay to the order of Gaylord,

Son & Co., for value received, ten thousand $\frac{}{100}$ dollars, with interest after maturity, at Central National Bank.

ROBERT MOORE & SONS.

[$5 internal revenue stamp duly cancelled. Gaylord, Son & Co.]

Upon the back of which said Exhibit B are endorsed the words, figures, and erasures following, to wit:

(Erased) GAYLORD, SON & CO.,
(Erased) Per GEO. B. BRADLEY.
ROBERT MOORE & SONS.

Protested for non payment, May 19, '68.
CHA'S H. STEPHENS,
Not. Pub.

95 *Exhibit C to dep'n of Geo. B. Bradley.*

Exhibit C, referred to in aforesaid deposition of Geo. B. Bradley and annexed thereto, is in the words and figures following, to wit:

$5,000 00. CINCINNATI, *January* 23, 1868.

Ninety days after date we promise to pay to the order of Gaylord, Son & Co., five thousand $\frac{}{100}$ dollars, payable at the Cent. Nat. B'k of Cin. Value received.

ROBERT MOORE & SONS.

[$2 50 internal revenue stamp duly cancelled.]

(Written across the end:)
Protested for non payment, April 25th, '68.
J. M. W., *N. P.*

Upon the back of which said Exhibit C are endorsed the words & erasures following, to wit:

(Erased) GAYLORD SON & CO.
(Erased) Per GEO. B. BRADLEY.

Exhibit D to dep'n of Geo. B. Bradley.

Exhibit D, referred to in aforesaid deposition of Geo. B. Bradley and annexed thereto, is in the words and figures following, to wit:

$2,000 00. CINCINNATI, *Febr'y 5th*, 1868.

Sixty days after date we promise to pay to the order of Gaylord, Son & Co., two thousand $\frac{}{100}$ dollars, payable at the Central Nat. B'k of Cin. Value received.

ROBERT MOORE & SONS.

[$1 00 internal rev. stamp, duly cancelled.]

Upon the back of which said exhibit D are endorsed the words and figures following, to wit:

GAYLORD, SON & CO.,
Per GEO. B. BRADLEY.
ROBERT MOORE & SONS.

Protested for non payment, Ap'l 8, '68.
CHA'S H. STEPHENS,
Not. Pub.

Exhibit E to dep'n of Geo. B. Bradley.

Exhibit E, referred to in aforesaid deposition of Geo. B. Bradley and annexed thereto, is in the words and figures following, to wit:

96 $400 00. CINCINNATI, *March* 9, 1868.

Sixty days after date we promise to pay to the order of Gaylord, Son & Co., for value received, four hundred $\frac{}{100}$ dollars, with interest after maturity, at Central National Bank.

ROBERT MOORE & SONS.

[20 c. internal revenue stamp, duly cancelled. Gaylord, Son & Co]

Upon the back of which said Exhibit E are endorsed the words, figures, and erasures following, to wit:

7535. R. MOORE & SONS.
May 11, 400.
(Erased) GAYLORD, SON & CO.,
(Erased) Per GEO. B. BRADLEY.

Exhibit F to dep'n of Geo. B. Bradley.

Exhibit F, referred to in aforesaid deposition of Geo. B. Bradley and annexed thereto, is in the words and figures following, to wit:

Know all men by these presents that Robert Moore & Sons, a firm doing business in the city of Cincinnati, State of Ohio, consisting of Rob't Moore, Arthur G. Moore, Hamilton Moore, Fred. R. Moore, and Augustus Moore, in consideration of seventeen thousand four hundred dollars ($17,400) to them paid by Gaylord, Son & Co., of the same place, the receipt of which is hereby acknowledged, do hereby bargain, sell, and convey to the said Gaylord, Son & Co., and assigns, the goods and chattels described in the schedule hereunto annexed: To have and to hold the same, to the use of the said Gaylord, Son & Co., their executors, administrators, and assigns: Provided, nevertheless, that, whereas the said Gaylord, Son & Co., are liable as endorsers and otherwise to pay certain debts of the said Robert Moore & Sons, and the said Robert Moore & Sons are indebted to the said Gaylord, Son & Co., and whereas the said R. Moore & Sons are desirous of renewing their paper with the endorsement of said Gaylord, Son & Co.: Now, if the said Robert
97 Moore & Sons shall keep and save the said Gaylord Son & Co. harmless from any costs, damages, or loss arising from, or out of such endorsement, security, and debt, the said Gaylord, Son & Co. agree to renew not to exceed eighteen months, then this conveyance shall be void; otherwise to be and remain in full force.

In witness whereof, the said Robert Moore & Sons, by Arthur G. Moore, one of the above-named firm, have hereunto set their hand and seal, this seventeenth day of March, in the year of our Lord one thousand eight hundred and sixty-eight.

ROBERT MOORE & SONS., [SEAL.]
By A. G. MOORE.

Signed, sealed, and acknowledged in presence of us—
WILLIAM STANTON.
A. S. LUDLOW.

[Stamped $17 50 U. S. int. rev. cancelled.]

Statement of claim.

STATE OF OHIO, *County of Hamilton, ss:*

George B. Bradley, book-keeper and agent of Gaylord, Son & Co., mortgagee, named in this mortgage, being duly sworn, makes oath and says that their claim against Robert Moore & Sons, mortgagor, of which a true statement is hereto annexed, amounts to the sum of seventeen thousand four hundred dollars, and that said claim is just and unpaid.

GEO. B. BRADLEY.

Sworn to and subscribed before me, a notary public in and for said county, this 17th day of March, A. D. 1868.

[NOTARIAL SEAL.] JAMES R. CHALLEN,
N. P. Ham. Co., O.

Schedule.

All the machinery, engines, boilers, tools, line-shafting, patterns, and apparatus used and held by said Robert Moore & Sons in their
98 establishment, known as the Cincinnati Locomotive Works, on the northwest corner of Pike & Front streets, Cincinnati, Ohio:

Notes endorsed for their accommodation	$15,000
Notes, for iron sold, renewed	2,400
	$17,400

THE STATE OF OHIO, *County of Hamilton, ss:*

I, Thomas L. Young, recorder of the county aforesaid, do hereby certify that the foregoing is a correct copy of a chattel mortgage (and schedule annexed) from Robert Moore & Sons to Gaylord, Son & Co., received and filed March 18th, 1868, at 5.25 o'clock p. m., in the recorder's office of Hamilton County, Ohio.

Witness my hand and official seal this 6th day of May, A. D. 1868.

{ RECORDER'S OFFICE, } THO'S L. YOUNG,
{ HAMILTON COUNTY, OHIO. } *Recorder Ham. Co., Ohio.*

[5 cents internal revenue stamp, cancelled.]

Exhibit G to dep'n of Geo. B. Bradley.

Exhibit G, referred to in aforesaid deposition of Geo. B. Bradley and annexed thereto, is in the words and figures following, to wit:

Notes of Robert Moore & Sons endorsed by Gaylord, Son & Co.

1. One dated May 8, 1867, at 60 days, for $10,000, renewed several times, and is note marked B.
2. One dated Dec. 4, 1867, at 60 days, for $2,000, renewed once, and is note marked D.
3. One dated Jan'y 23, 1868, at 90 days, for $5,000, and is note marked C.
4. Note given by Robert Moore & Sons to Gaylord, Son & Co., dated Feb'y 5, 1868, at 30 days, for $422 28, renewed (in part) by note
99 dated March 9, 1868, at 60 days, for $400, and is note marked E.

STATE OF OHIO, *County of Hamilton, ss:*

I, Luman Allen, a notary public within and for the county of Hamilton, State of Ohio, do hereby certify that George B. Bradley was by me first duly sworn to testify the truth, the whole truth, and nothing but the truth, and that the deposition by him subscribed, as above set forth, was reduced to writing by myself in the presence of the witness, and was subscribed by the said witness in my presence, and was taken at the time and place in the annexed notice specified, and continued by adjournment from day to day, as above specified; that I am not counsel, attorney, or relative of either party, or otherwise interested in the event of this suit.

In testimony whereof I hereunto subscribe my name and affix my notarial seal, at Cincinnati, in said county, this 3d day of March, 1869.

{ NOTARIAL SEAL, HAMILTON CO., O. }

LUMAN ALLEN,
Notary Public, Hamilton Co., Ohio.

And afterwards, to wit, on the fifth day of May, in the year last aforesaid, there was filed in the clerk's office of said court the deposition of Thomas G. Gaylord in the foregoing case, and referred to in aforesaid certified statement of evidence, which said deposition is in the words and figures following, to wit:

Deposition of Thomas G. Gaylord.

U. S. circuit c't, southern dist. of Ohio.

THE STATE OF OHIO, *Hamilton County, ss:*

AMERICUS WARDEN ET AL., COMPLAINANTS,
vs.
THOMAS G. GAYLORD ET ALS. } No. 1081.

The complainants & cross-petitioners will take notice that, on Monday, the third (3d) day of May, A. D. 1869, the defendants Gaylord, Son & Co., above named, will take the depositions of Thomas G. Gaylord, to be used as evidence on the trial of the above cause, at the law office of Perry & Jenney, N. W. corner of Third & Main streets, in the city of Cincinnati, in the county of Hamilton, in the State of Ohio, between the hours of eight o'clock a. m. and six o'clock p. m. of said day, and that the taking of the same will be adjourned from day to day, between the same hours, until they are completed.

100

PERRY & JENNEY,
Attorneys for Gaylord, Son & Co.

Service of the above notice is acknowledged, and proof of the official character of the officer before whom the said depositions may be taken is, by agreement, waived; also, all exceptions in regard to time.

THOMAS J. HENDERSON,
Att'y for Mary Harkness.
KING, THOMPSON & AVERY,
Att'ys for Harkness et al.
HOADLEY, JACKSON & JOHNSON,
For Gibson.
WILLIAM STANTON,
For Assignees of Robert Moore & Sons.
EGLY & WARDEN,
Att'ys for Petitioners, ect.

Deposition of a witness taken before me, J. T. Fallis, a notary public within and for the county of Hamilton, in the State of Ohio, on the third (3rd) day of May, in the year A. D. 1869, between the hours of eight a. m. and six o'clock p. m., at the law office of Perry & Jenney, N. W. corner of Third & Main streets, in the city of Cincinnati, county of Hamilton, and State of Ohio, pursuant to the annexed notice, to be read in evidence on behalf of the defendants Gaylord, Son & Co., in an action pending in the United States circuit court, southern district of Ohio, in which Americus Warden et al. are plaintiffs,
101 and Thomas G. Gaylord et als. are defendants.

THOMAS G. GAYLORD, of lawful age, being by me first duly examined, cautioned, and solemnly sworn, deposes and says, in answer to—

By counsel for Gaylord, Son & Co.:

First interrogatory. State your name and of what firm you are a member.

First answer by witness Thomas G. Gaylord. My name is Thomas G. Gaylord; I am a member of the firm of Gaylord, Son & Co., of defendants and cross-petitioners in this action.

2nd int. by same. State what, if any, agreement or arrangement was made between your said firm and the firm of Robert Moore & Sons of Cincinnati, Ohio, in regard to your firm endorseing certain notes made by said Robert Moore & Sons; if any such agreement was made, state when, and by whom made, and what was done under it.

2nd answer by same. During January of 1868, I think it was, Frederick Moore, of the firm of Robert Moore & Sons, called at our office, and stated that they were owing some twenty thousand dollars; that, if they could arrange with us for our endorsement of their notes as this debt became due, it would enable them to preserve a fine credit which they were then enjoying, and successfully prosecute a large business which they expected to do the opening of spring, having good prospects for obtaining several large contracts then in prospect; that they would at the same time, for said endorsements, guarantee us they should never give us any trouble, and, to secure us beyond any contingency that might occur, would execute a chattel mortgage upon their entire manufacturing place, tools, stock, etc., which they valued, if fairly sold, at seventy thousand dollars, and which they assured me was entirely free from all incumbrance. [Feeling anxious to accom'odate the above firm of
102 Robert Moore & Sons because of their long standing, high integrity, and reputation as mechanics in this city——]

(Part in brackets objected to by Mr. Henderson, counsel for Mary Harkness.)

I said to Mr. Frederick Moore I would the next day let him know what I would do. The next day, I think it was, Mr. Frederick Moore came in, and desired my answer, to which I replied, I had found, on investigation, their credit was then considered good, and I had every faith in all their representations as made to me in view of making this arrangement with us; would therefore propose to endorse their notes for fifteen thousand dollars upon said mortgage as they might require said endorsements, and might do so for twenty, but would not then pledge myself for more than fifteen. For said arrangement he expressed himself as very grateful, and then pledged us his entire orders in our line. Before leaving he said to me he should want an endorsement for five thousand dollars perhaps the next day, which would be before he could execute the proposed chattel mortgage, to which I replied, "My

confidence in your father and your firm is such that I will give you the endorsement, if required so soon, and you may make me out chattel mortgage and bring in at your very earliest convenience," which he agreed to do. I further said to him, since my intentions in this proposition was to assist them, feeling it entirely safe on my part, would suggest and promise not to record said mortgage, but keep same in my office unbeknown to any but Mr. Bradley, my confidential book-keeper, till such a time as they themselves might desire me to have it recorded, thus leaving the matter entirely with their integrity to protect my interest. In pursuance with this arrangement our Mr. Bradley, for the house, as their financial officer, endorsed the originals of which the Exhibits B, C, & D, to the deposition of George B. Bradley, filed herein, are copies. Said mortgage of Messrs. Moore & Sons was brought in some
103 days, or weeks, perhaps it may have been, after the date of this arrangement and first endorsement of some five thousand dollars, received by Mr. Bradley, and put away, as agreed, without recording, and was not recorded till we had, under this arrangement, endorsed some seventeen thousand or more, when Mr. Frederick Moore and, I think, afterwards Mr. Arthur Moore, called in to insist upon a further endorsement of five thousand dollars, which would then give them our name, I think, for some twenty-two thousand dollars or more. This I declined to do, feeling, by this time, trouble might grow out of this arrangement to us. Shortly after this, perhaps not many days, one of the Moores called in, and stated there were the prospects of certain judgments being had against them—I think it was in favor of the Harkness heirs, and we had best have our mortgage recorded immediately. This startling news to me induced a full conversation with them upon their present condition, and was at that time assured by them that they felt themselves perfectly able to pay all debts, and that we, through our mortgage, were entirely safe. We at once instructed our Mr. Bradley to attend to having said mortgage recorded, first having same examined by Mr. Perry, and, if found in all particulars correct, proceed to record same. Mr. Bradley reported Mr. Perry not in; not desiring to lose time, passed on to Mr. Challen's office, who examined same, and reported said mortgage in form faulty, and recommended a new mortgage, which, I think, he drew up, and which, some days after, and with considerable trouble with Messrs. Moore & Sons, was finally executed. Our anxiety in this matter at this time was to obtain our true position as to record ahead of one we had understood was now given to David Gibson.

3rd int. by same. Look at the paper now shown you, & state what it is.

104 3rd answer by same. This is the first mortgage, which Mr. Challen pronounced faulty, and recommended a new mortgage; it is the original, of which a copy is attached to the deposition of George B. Bradley, marked Exhibit A.

4th int. by same. State what was the representation of said firm of R. Moore & Sons as to responsibility & credit at the time you made the arrangement with them in January, 1868, and at the time they executed to you the mortgage of date March 17th, 1868, and which was filed as you have stated above.

4th answer by same. On inquiry at banks, manufacturers in our trade, and merchantile agencys, we found their credit, at the time of giving us the first mortgage, large for integrity, prompt as business men, A 1 as mechanics, and fair as to means. At the time of executing the second mortgage their credit, as to means, was not so good, but in all other particulars the same.

5th int. by same. When you speak in answer to second interrogatory of the first endorsement of some $5,000 00 state which one of the endorsed notes that was.

5th answer by same. It is the note of which Exhibit C, attached to George B. Bradley's deposition is a copy. It is dated January 23, 1868.

Counsel for defendants waive cross-examination.

T. G. GAYLORD.

I, J. T. Fallis, notary public, do hereby certify that T. G. Gaylord was by me first duly sworn to testify the truth, the whole truth, & nothing but the truth, and that the foregoing deposition was reduced
105 to writing by myself in the presence of said witness, & by him subscribed in my presence, & was taken at the time & place in the annexed notice specified; that I am not counsel, attorney, or relative of either party, or otherwise interested in the event of this suit.

{ NOTARIAL SEAL } J. T. FALLIS,
{ HAMILTON CO., O. } *Notary Public, Hamilton Co., O.*

And afterwards, to wit, on the eighteenth day of May, in the year of our Lord one thousand eight hundred and seventy, came David Gibson, esq., and filed in the clerk's office of said court his appeal bond herein, which said bond is in the words and figures following, to wit:

Appeal bond of David Gibson.

Know all men by these presents that we, David Gibson, principal, and Christian Kinsinger, surety, of Cincinnati, county of Hamilton, State of Ohio, are held and firmly bound unto Americus Warden and Augustus S. Ludlow, in the sum of five hundred dollars, for the payment of which well and truly to be made, we do hereby jointly and and severally bind ourselves, our and each of our heirs, executors, and administrators, firmly by these presents, sealed with our seals and dated this eighteenth day of May, A. D. 1870.

Whereas a decree has been rendered by the circuit court of the United States for the southern district of Ohio, at the April term thereof, 1870, in favor of Americus Warden & Augustus S. Ludlow against David Gibson and others, and said Gibson having obtained the allowance of an appeal from said decree:

Now, therefore, the condition of this obligation is such, that if the said David Gibson shall prosecute his said appeal to effect in the Supreme Court of the United States, to which said appeal is made, and answer all damages and costs in case said decree shall be affirmed, then the above obligation to be void; otherwise to be and remain in full force and virtue.

106

DAVID GIBSON. [SEAL.]
C. KINSINGER. [SEAL.]

Attest: TOM AMBROSE.
R. C. ROHNER.

And afterwards, to wit, on the nineteenth day of May, in the year last aforesaid, came William Elden, esq., for & on behalf of Gaylord, Son & Co., and filed in the clerk's office of said court their appeal bond herein, which said bond is in the words and figures following, to wit:

Appeal bond of Gaylord, Son & Co.

Know all men by these presents that we, William Elden, for & on behalf of Gaylord, Son & Co., principals, and William Galway & Joseph Kinsey, sureties, all of Cincinnati, County of Hamilton, and State of Ohio, are held and firmly bound unto Americus Warden and Augustus S. Ludlow in the sum of five hundred dollars, for the payment of which well and truly to be made, we do hereby bind ourselves, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents, sealed with our seals and dated this nineteenth day of May, A. D. 1870.

Whereas an appeal has been taken from a certain decree of the circuit court of the United States for the southern district of Ohio, rendered at the April term thereof, 1870, in favor of Americus Warden & Augustus S. Ludlow against Thomas G. Gaylord and others, partners, as Gaylord, Son & Company et als.:

Now, therefore, the condition of this obligation is such that if the said Gaylord, Son & Company, shall answer all damages and costs in case the decree of said circuit court shall be affirmed by the Supreme Court of the United States, to which court said appeal is taken, then this obligation to be void; otherwise to be and remain in full force and effect.

W'M ELDEN, [SEAL.]
For GAYLORD, SON & CO.
W'M GALWAY. [SEAL.]
JOSEPH KINSEY. [SEAL.]

Attest: TOM AMBROSE.
R. C. ROHNER.

107 UNITED STATES OF AMERICA,
Southern District of Ohio, ss:

I, John McLean, clerk of the circuit court of the United States within and for said district, hereby certify the foregoing transcript to be truly taken and copied from the files and record of said court as the same remain in this office.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at Cincinnati, this 1st day of October, A. D. 1870, and in the 95th year of the independence of the United States of America.

Attest:
[SEAL.] JOHN McLEAN, *Clerk.*

108 THE UNITED STATES OF AMERICA:

Supreme Court of the United States.

To Americus Warden & Augustus S. Ludlow, greeting:

Whereas David Gibson for himself, and Thomas G. Gaylord, Benjamin B. Gaylord, Jared B. Green, Charles S. Green, William Elden, & William Colcord, partners, as Gaylord, Son & Company, for themselves, severally, have obtained the allowance of an appeal to the circuit court of the United States for the southern district of Ohio, directed to remove into the said Supreme Court, to be holden at the city of Washington, on the first Monday in the month of December next, the record of a certain plaint, process, proceedings, and decree in an action of chancery, wherein you, the said Americus Warden and Augustus S. Ludlow, in that action lately recovered against the said David Gibson et

als., and costs, as by the said record in the said circuit court of the United States remaining appears, in which record and proceedings, and also in the rendition of the decree thereupon, manifest error hath intervened, as by the said David Gibson and others, we are informed, and our said appeal granted, issued, and allowed as aforesaid, for the purpose of correcting the errors aforesaid alleged, if any there be: You are therefore hereby commanded and cited to be and appear before the judges of the said Supreme Court, at the city of Washington, at the next term of said court, to be holden on the first Monday in the month of December next, to have the errors aforesaid corrected, and the judgment of our said Supreme Court thereupon.

Witness the Honorable Salmon P. Chase, Chief Justice of the United States of America, this 20th day of May, in the year of your Lord one thousand eight hundred and seventy, and of the independence of the United States of America the 94th.

[SEAL.]

N. H. SWAYNE,
Asso. Jus. Sup. Court, U. S.

109 (Indorsed:) May 21st. 3½. 533. 1081. United States circuit court, southern district of Ohio. Americus Warden and Augustus S. Ludlow vs. Thomas G. Gaylord et als. Citation.

SOUTHERN DISTRICT OF OHIO, *ss:*

Before me, Franklin Halliday, a commissioner of the circuit court of the United States, within and for the district aforesaid, this 24th day of May, A. D. 1870, personally appears Charles T. Van Sicklen, of lawful age, who, being by me first duly sworn, according to law, says:

That he is a general deputy of Andrew Hickenlooper, United States marshal for said district; that at 5 o'clock p. m. on the 23d day of May, 1870, this writ, together with two true copies thereof, was given to him by said marshal for service upon the within named Americus Warden and Augustus S. Ludlow, and that, on the 24th day of May, 1870, he served the same by copy, personally, upon said Warden, at 25 minutes after 9 o'clock a. m., and upon said Ludlow at 13 minutes after 10 o'clock a. m.

And further saith not.

CHA'S T. VAN SICKLEN.

Subscribed and sworn to this 24th day of May, 1870, before me.

[SEAL.]

F. HALLIDAY,
U. S. Comm. S. Dist., Ohio.

Fees: 2 services, 4 00; 2 copies, 1 00; 2 miles, 12—$5 12.

(Indorsement on cover:) No. 299. David Gibson, for himself, & Thomas G. Gaylord, Benjamin B. Gaylord, Jared B. Green, Charles S. Green, William Elden, & William Colcord, partners, as Gaylord, Son & Company, appellants, vs. Americus Warden & Augustus S. Ludlow. S. Ohio C. C. U. S. Filed 18th November, 1870.

Robert Clarke & Co., Printers, 65 West Fourth Street, Cincinnati, Ohio.

Supreme Court of United States.

David Gibson et als.,
Appellants,

vs.

Americus Warden et als.,
Appellees.

Geo. HOADLEY & Edgar M. JOHNSON,
Attorneys for Gibson.

POINTS.

First. A chattel mortgage executed by one partner in his individual name, but sealed with the seal of the partnership, will bind the firm at law, where the instrument itself shows conclusively that it was intended to be executed in the name and as the act of the partnership, and the testimony proves that all the partners had consented to the execution and delivery of the instrument, and that the signing of the same by the partner in his individual name instead of that of the partnership, was simply a clerical error upon his part.

Montgomery v. *Dorian*, 7 N. H. 475.
Magill v. *Hinsdale*, 6 Conn. 464–69.
Love v. *S. N. L. W. & M. Co.*, 32 Cal. 639–54.
Tenant v. *Blacker*, 27 Georgia, 418.
Zouch ex. dem. Woolston v. *Woolson*, 2 Bur. 1147.
Rogers, Adm'r., v. *Frost, Adm'r.*, 14 Texas, 267.

Second. A seal not being required to the valid execution of a chattel mortgage in Ohio, where one is affixed to such an instrument it may be entirely disregarded.

Purviance v. *Sutherland*, 2 Ohio St. 478.
Webster et al. v. *Harris et al.*, 16 Ohio, 490–501.
Milton v. *Mosher*, 7 Metcalf, 244.
Tapley v. *Butterfield*, 1 Metcalf, 515.
Eureka Co. v. *Bailey Co.*, 11 Wallace, 488.
11 Texas, 376.
40 Missouri, 69.
12 N. H. 206.
7 M. & W. 323.

Third. If a chattel mortgage be executed by one partner under the circumstances, as set forth in point first, the seal may be disregarded, and the instrument will be deemed and held as binding on the partnership.

Sherm n v. *Fitch*, 98 Mass. 59.
Haskell v. *Cornish*, 13 Cal. 45–47.
McDonald v. *B. R. & A. W. & M. Co.*, 13 Cal. 221.
Dispatch Line v. *Bellamy M'f'g Co.*, 12 N. H. 206.

Fourth. A chattel mortgage, executed under the circumstances, as set forth in point first, if it does not bind the partnership at law, does so in equity, and a court of equity will decree its reformation, in order to effect the obvious intention of the parties.

Tebb v. *Hodge*, L, R., 5 Com. Pleas, 73.
Webster et al. v. *Harris et al.*, 16 Ohio, 490.
McNaughten et al. v. *Partridge et al.*, 11 Ohio, 223.
Evants v. *Adm'r of Strode*, 11 Ohio, 480.
Hunt v. *Freeman*, 1 Ohio, 491.
Hunt v. *Rhodes et al.*, 1 Peters, 1.

Fifth. An equitable chattel mortgage in Ohio is binding upon subsequent purchasers and creditors chargeable with actual notice of its existence.

Paine & Kendall v. *Mason*, 7 Ohio St. 199.
Day v. *Munson*, 12 Ohio St. 488.

Sixth. By the provisions of the 35th section of the Bankruptcy Act, a chattel mortgage, securing one who is under liability for a failing debtor, can only be attacked

in bankruptcy, on the ground of illegal preference, within four months from its delivery and record.

Bean v. *Brookmire*, 10 Am. L. Reg., N. S. 181.

Seventh. After the lapse of four months the preferences an insolvent debtor may have made, so far as the preferred creditor is concerned, are valid as against all the world, and can not be questioned.

Bump on Bankruptcy (3d ed.,) 401.
Potter et al. v. *Coggeshall*, 4 B. R. 19.
In re Wynne ne, 4 B. R. 5.
In re Fuller, 4 B. R. 29.
Bean v. *Brookmire*, *supra.*

Eighth. The validity of a mortgage can not be questioned under the Bankruptcy Act on the ground of illegal preferences, if more than six months have elapsed since its execution, though placed on record within that period.

In re Wynne, 4 B. R. 5.

Robert Clarke & Co., Printers, 65 West Fourth Street, Cincinnati, Ohio.

Supreme Court of United States.

David Gibson et als.,
Appellants,

vs.

Americus Warden et als.,
Appellees.

BRIEF FOR DAVID GIBSON.

This was a bill in equity filed in the Circuit Court of the United States in and for the Southern District of Ohio, by the appellees, as assignees in bankruptcy of the firm of Robert Moore & Sons, for the purpose of marshaling liens and settling priorities between the creditors and lien-holders of said firm.

The answer of David Gibson (Record, p. 26) discloses that on the 8th day of March, 1868, Robert Moore & Sons executed and delivered to him a chattel mortgage to secure him, the said Gibson, as indorser on a certain promissory note, for the sum of $6,000, made

by said Robert Moore & Sons, and indorsed by Gibson for their accommodation, of even date with said mortgage, and payable in sixty days after date; that said note was negotiated and used by said Robert Moore & Sons in the business of their said firm; that he, the said Gibson, received no consideration whatsoever for his said indorsement; that when the same matured, appellant was obliged to pay the amount thereof, and that no portion of said sum has been repaid to him, but that the same is still due and unpaid.

It is admitted, in the original bill, that the property covered by said chattel mortgage has been sold by the assignees, and that they now hold the proceeds thereof, amounting to the sum of $17,301.05 in their hands, for distribution as the Court may direct.

The mortgage to appellant was executed on the 8th day of March, 1868, and filed in compliance with the laws of the State of Ohio, on the 18th day of March next thereafter (Record, p. 46). On the 15th day of September, 1868, a petition in bankruptcy was filed against the said Robert Moore & Sons, under which they were subsequently adjudged bankrupts and appellees appointed their assignees. It is so alleged in the original bill (Record, p. 5), and it is a fact about which there is no controversy.

The appellant, David Gibson, claimed that his mortgage was a valid and subsisting lien on the property

therein described, and that he was entitled thereby to be first paid out of the funds arising from the sale thereof, on distribution.

The Court below held (Record, p. 31), "that the defendant, David Gibson, is not entitled to the relief sought in his cross-bill, and that his alleged mortgage is invalid, and gives and secures to him no priority or right whatever, but that he stands, with reference to the funds named in the bill, simply on the footing of a general creditor;" to reverse which finding and decree appellant prosecutes this appeal.

I.

We propose to discuss, first, the only question actually considered and disposed of, by Chief Justice Swayne, who heard the case below, in the oral opinion announced by him. We ought, however, in justice to him, in the outset, say, that the cause was argued and submitted in the afternoon of the day preceding the one on which he was obliged to leave Cincinnnti, and decided by him on the next morning, without the opportunity, as he himself said, of examining the matter as fully as he would like to have done.

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IS THE CHATTEL MORTGAGE OFFERED IN EVIDENCE BY DAVID GIBSON (RECORD, P. 45, EXHIBIT P.), THE CHATTEL MORTGAGE OF ROBERT MOORE & SONS, IRRESPECTIVE OF ANY QUESTION THAT MAY ARISE AS TO ITS VALIDITY, BY REASON OF THE PROVISIONS OF THE BANKRUPTCY ACT?

By an inspection of the instrument, it will be seen that it is simply signed *Robert Moore*, but sealed with the partnership seal—all the requirements of the laws of Ohio, as to filing, etc., have been fully complied with (Record, p. 46).

We say that it is sealed with the partnership seal of Robert Moore & Sons, and not with the private seal of Robert Moore, because the *in testimonium* clause is conclusive proof of that fact. "In testimony whereof the said Robert Moore & Sons, by Robert Moore, have hereunto set their hand and *seal*, etc."

It was unquestionably the intention of Robert Moore, and the mortgage by its language so expresses on its face that intent, as we shall more fully discuss herein, hereafter, to act for and bind the firm of Robert Moore & Sons, and not himself individually—the oral testimony shows conclusively that he had full authority so to do—and we claim that in law the instrument in question so does, and in its execution is sufficient.

In *Montgomery* v. *Dorion*, 7 N. H. 475, it was held that "where a deed of land was made in the name of the prin-

cipal but executed by an attorney as follows: 'In testimony of the foregoing, I. W. being duly constituted attorney for the purpose, has hereunto set his hand and seal, I. W. and seal,' it was *held*, "that the instrument was sufficient to pass the estate of the principal."

Chief Justice Richardson, in announcing the opinion of the Court, says: "Is the deed of the 20th November, 1828, so executed as to pass the estate?"

When an attorney or agent makes a deed of land, to make it pass the estate of the principal, it must be made in the name of the principal. In this case the deed is in the names of the principals, so that the only objection to it is, that it is not so executed as to make it the deed of the principal.

There is no particular form of words required to be used, provided the act be done in the name of the principal. 2 Starkie's Ev. 477.

Where a deed was executed then "for James Brown, M. Wilkes, and seal," it was held to be well executed. 2 East. 142.

It is not material that there should be more than one seal. 4 D. & E. 313.

It is immaterial whether the names of the grantors are put at the bottom or at the top of the writing, if in the whole instrument the grant purports to be their grant. 3 Merrivale, 52; 2 Starkie's Ev. 605.

In this case, in testimony that the grantors who are

named as such in the deed make the conveyance, the agent puts his hand and seal to the instrument. This seems to be tantamount to putting his (the principal's) hand and seal to the instrument, which is sufficient.

"We are of the opinion that the deed is sufficient to pass the estate."

Magill v. *Hinsdale*, 6 Conn. 464–469, was a case in which a deed was signed by an agent in his individual name, and sealed with his private seal. It was held that "to bind the principal by the act of an authorized agent in the execution of a deed, no particular form of words is necessary; but the capacity in which the agent acts must appear from the face of the instrument, and where this is the case it is sufficient."

Judge Peters, in delivering the opinion, uses the following language: "No particular form of words is necessary for an agent to bind his principal, if he express in the instrument the capacity in which he acts. Deeds are to receive a construction from the whole taken together, and every deed ought to be so construed as to effect the intention of the parties, *ut res magis valeat, quam pereat.* In *Hovey* v. *Magill*, 2 Conn. 680–682, Swift, Chief Justice, delivering the opinion of the Court, remarks, that no precise form of words is required to be used, that every word must have effect if possible, and that the intention must be taken from the whole instrument taken together. Who can entertain a doubt, upon

reading the deed in question, that it was the intention of the plaintiff to bind the company?"

We repeat the query as to the instrument under consideration.

In *Love* v. *S. N. L. W. & M. Co.*, 32 California, 639–654, Judge Shafer, in announcing the opinion of the Court, says: "Though the indenture in this case is under the seal of the trustees, yet when considered as an agreement for a mortgage, it may be treated as a simple contract, nevertheless, and we consider it clear from the authorities *that it is not indispensable in order to bind the principal at law even*, that such contract should be executed in the name or as the act of the principal. On the contrary, it will be sufficient if, upon the whole instrument, it can be gathered from the terms thereof that the party describing himself acts as agent, and intends thereby to bind his principals, and not to bind himself."

In *Zouch, ex dem. Woolston*, v. *Woolson*, 2 Bur. 1147, Lord Mansfield laid down the rule, which certainly seems to be the true one, "Whatever is an equitable, ought to be deemed a legal execution of a power."

Judge Wilmot, in the same case, says: "Courts of law and courts of equity ought to concur in supporting the execution of powers. They ought not to listen to mere distinctions that savor of the sophistry of the schools, but be tried by true good sense and manly reason."

Certainly, tested by such a standard, the mortgage in question is well executed.

In *Rogers' Adm'r* v. *Frost Adm'r*, 14 Texas, 267, it was held "that where one purporting to act as attorney for another executes a deed in his own name, the deed will be sustained if the person executing it had authority to make a proper deed."

In *Tenant* v. *Blacker*, 27 Georgia, 418, it was held that, "Although an attorney to execute a deed merely signs his own name to it, yet if enough appear on the face of the deed to show that he was acting as attorney, and not as principal, it is a good execution."

Thus far we have considered the question as if a seal were necessary to the valid execution of a mortgage of personal property; but a seal is not required to the valid execution of a chattel mortgage or bill of sale in Ohio. One, however, was attached to the instrument in question.

The instrument itself being one which, under the laws of Ohio, did not require a seal, the seal though attached may be disregarded.

In *Purviance* v. *Sutherland*, 2 Ohio St. 478, the question now presented has been expressly decided. That was a case where one partner executed a note in the firm name, under seal, without any express authority so to do. We quote from the syllabus:

"The rule that a partner has no power to bind a co-

partner by deed, does not extend so far that an agreement is no evidence at all against the firm because a seal happens to be attached to it.

"The terms of the rule are fully observed when it is said that such an agreement is not the *deed* of the firm. But the company may nevertheless be bound by it in certain cases. *Thus a transfer of property, which would be good if made by an unsealed instrument, is not vitiated because a seal is attached.* And an agreement to pay money or perform services, though the deed only of the partner sealing it, may yet be evidence of a partnership liability.

"The form of the agreement may be *prima facie* evidence that the firm was bound, *and that it was a mere mistake of law that the contract was sealed.*"

It certainly will not be contended in this case that by the *form* of the chattel mortgage it was not intended to bind the firm of Robert Moore & Sons. It purports in all its conditions to be the act of the firm, and the evidence of Robert Moore (Record, p. 33) shows conclusively that it was intended to be a *partnership* act, and that the form of the execution, if not in the name of the firm, was simply a clerical error upon his part.

In *Webster et al.* v. *Harris et al.*, 16 Ohio, 490–501, Chief Justice Burchard, in announcing the opinion of the Court, says: "That was what they designed, and the accidental circumstance of affixing a seal to the signature of Payne will not be allowed in this Court to make it

otherwise. * * * * * No well-settled rule, or well-considered adjudication, will be contravened by rejecting the seal and reforming the contract, so as to make it effect the object of the contracting parties."

We cite also:

11 Texas, 376; 40 Missouri, 69; 12 N. H. 206; 7 M. & W. 323.

The transaction in question being an Ohio one, we presume that the Court will consider so much of the question at issue as has been passed upon by the Supreme Court of that State, in the cases quoted *supra*, as conclusive for the purposes of this cause.

Precisely the same doctrine has been held in Massachusetts. "As a mortgage of personal property need not be under seal, and as a mortgage of such property of a firm, made by one of the partners to secure a debt of the firm, is valid, the addition thereto by him of a seal does not vitiate it." *Milton* v. *Mosher*, 7 Metcalf, 244.

"The rule that one partner can not bind his copartner by deed does not apply where one partner conveys by deed, property of the firm which he might have conveyed without deed. *Hence a sealed mortgage* of the goods of the firm, executed by one partner in the name of the firm, binds both partners. *Tapley* v. *Butterfield*, 1 Metcalf, 515.

The question we are now discussing is not a new one in this Court. In the case of *Eureka Company* v. *Bailey Com-*

pany, 11 Wallace, 488, decided as late as December, 1870, it was held that "a contract in writing may be binding on a corporation though a private seal of one of its officers was used instead of the corporate seal, and though no record may be found authorizing the officer to make the contract, if other evidence proves that he had such authority, or that the company ratified his acts afterward."

Mr. Justice Miller, in announcing the opinion of the Court, said: "We are satisfied that the agreements set up in the bill are the valid contracts of the defendant. Though the plaintiff was unable to produce any resolution or order in writing, by the trustees or board of directors of the defendant corporation, *and though the seal used was the private seal of one of its officers, instead of the corporate seal, neither of these is essential to the validity of the contract.*"

Disregarding, then, as we have shown we may do, the fact of a seal being attached, does the mortgage in question bind, as it purports in its recitals to do, the firm of Robert Moore & Sons?

There can be no question as to the actual intent of the parties. The testimony shows conclusively that the note in question was indorsed by Gibson for the use of the firm, and was actually used in their business (testimony of Frederick Moore, Record, p. 36). Robert Moore testified (Record, p. 33), "I don't remember whether I signed the chattel mortgage to Gibson. There was no

express statement among our firm as to who should sign the mortgage. After consultation among the members of the firm, the mortgages were signed; it would be legal whoever signed them. *The execution of these mortgages was known to all the firm and acquiesced in by all of us, and they were made with the knowledge and consent of all.* I don't recollect distinctly that I signed the Gibson mortgage. If I did sign it, I intended to sign Robert Moore & Sons, and if I did not, it was a mere oversight on my part. I don't remember where I signed it, but think at Ludlow & Stanton's office, as they are witnesses to it. The transaction on the part of Gibson was for our accommodation, and the note was used for the firm of Robert Moore & Sons." The testimony shows conclusively, and the fact is not controverted, that the signature to the mortgage is that of the witness, Robert Moore.

But let us examine the instrument itself for the purpose of applying the best test as to the intention of the parties at the time of its execution. Oral evidence might have been changed between the date of the instrument and the day of trial, but the mortgage in writing speaks for itself.

It recites that "Robert Moore, Arthur G. Moore, Frederick R. Moore, and Hamilton Moore, a firm doing business in Cincinnati, under the firm name of Robert Moore & Sons," in consideration of, etc., convey the goods and chattels in the schedule annexed, which are

therein described as "used by said Robert Moore & Sons in their establishment," etc.

The defeasance clause provides, "That if the said Robert Moore & Sons shall pay, etc., * * * their promissory note," etc.; while the form of attestation is as follows: "In witness whereof, the said Robert Moore & Sons, by Robert Moore, one of the firm above named, have hereunto set their hand and seal, this 8th day of March, in the year of our Lord one thousand eight hundred and sixty-eight."

Can it be claimed that by such language it was the intion of Robert Moore to mortgage or convey by way of security any thing other than the firm property of Robert Moore & Sons? The debt to be secured was that of the firm; the property conveyed belonged to them and was in their possession, and every recital in the instrument is inconsistent with any other theory, and this aside from the oral testimony, which, uncontradicted as it is, must conclusively determine the proposition.

The case of *Sherman* v. *Fitch*, 98 Mass. 59, is almost precisely similar to the one at bar.

That was a case in which the Northampton Sugar Refinery attempted to execute a chattel mortgage on its property. The recitals in the conveyance were all those of the corporation. It concluded as follows:

"In testimony whereof, I, the said ——, have hereunto set my hand and seal, this nineteenth day of January,

in the year of our Lord one thousand eight hundred and sixty-five.

"GEORGE R. SAMPSON, [SEAL.]

"*President of Northampton Street Sugar Refinery*"

—the attestation clause purporting to be simply the individual act of Sampson, and the seal attached being his private seal, and not that of the corporation.

Judge Wells, announcing the opinion of the Court, uses the following language, every word of which is singularly applicable to the cause at issue:

"The question submitted to us is whether the instrument, of which a copy is annexed to the plaintiff's bill, is a valid mortgage of its property by the Northampton Street Sugar Refinery. The instrument itself is incapable of any other construction than as the mortgage of the corporation. It names the corporation as the party making it; describes the machinery as upon the premises and in the use and ownership of the corporation; provides for the payment by the corporation, and continued possession of the property until default. It is upon its face the contract of the corporation, *and can not be made the contract of Sampson by any form of signature whatsoever.*

The signature, "Geo. R. Sampson, President of the Northampton Street Sugar Refinery," is consistent with this construction, and in form is a good execution by the corporation of a simple contract. Sampson's seal affixed does not make the instrument his contract, neither does

it make it any the less the contract of the corporation. If a seal were essential to the validity of the mortgage it would fail for the same reason. If the construction were doubtful upon the page of the instrument, the doubt might be resolved by ascertaining with whose seal it had been executed. But no such conditions exist here. *No seal was necessary.* As a sealed instrument it could not be construed as either the contract of Sampson or the corporation. *But if the seal be disregarded, as it may be, the contract will operate as it was clearly intended, as the mortgage of the corporation.*"

Applying, not only the language, but the reasoning of the Court to the case at bar, how can it be claimed that the mortgage in question is the individual act of Robert Moore. "It is upon its face the contract of the corporation (of the partnership), and can not be made the contract of Sampson (Moore), by any form of signature whatever."

In *Haskell* v. *Cornish*, 13 Cal. 45–47, Chief Justice Baldwin, announcing the opinion (which was concurred in by Judge Field, now of this court), remarks: "In instruments not under seal, or not required to be executed with any particular formality, it is not important in what form the obligation of the party executing as agent or principal is expressed, if from the entire instrument the true character of it can be gathered. The essential thing is, that the paper show the fact."

So also in *McDonald et al* v. *B. R. & A. W. & M. Co.*, 13 Cal. 221, Judge Field, also sitting in that case, it was held that, "The rule requiring an instrument to be executed or signed in the name of the principal, does not apply to instruments not under seal."

Chief Justice Baldwin, again delivering the opinion, says: "If the name of the principal and the intention to bind him appear in an instrument not under seal, the agent having authority the principal alone will be bound, *though* the instrument be signed in the agent's name only.

In *Dispatch Line* v. *Bellamy Manufacturing Co.*, 12 N. H. 206, it was held that "an instrument under seal executed by one acting as agent, purporting to convey real and personal estate, if it can not lawfully operate as a conveyance of the real estate for want of authority in the agent to execute a deed, may avail as an unsealed instrument for the conveyance of personal property, if the principal has given authority to make such a conveyance, or has subsequently ratified in a manner sufficient for that purpose."

But if we are wrong and the mortgage in question is not the act of the partnership, is it not such an instrument as upon its face, and the testimony showed by the record, would have entitled appellant Gibson to a reformation in equity, and to a decree ordering Robert Moore & Sons to properly execute it in pursuance to the original agreement.

If even this be so, we are entitled to a reversal of the decree.

The original bill is filed by appellees as assignees in bankruptcy of Robert Moore & Sons. They have no other or greater rights than their assignors, save the special powers and functions conferred upon them by the provisions of the bankruptcy act. The object of the bill is simply to settle equities and priorities among the creditors of Robert Moore & Sons. Now, if Gibson has a priority of *any kind whatsoever* over the remaining creditors, whether legal or equitable, that priority must be respected. The decree finds that the mortgage "secures to him no priority or right whatsoever."

Let us, for the sake of the argument, suppose that, prior to the bankruptcy of Robert Moore & Sons, Gibson had discovered the error made in the execution of the mortgage, and had filed a bill in equity for reformation; that he had, at the hearing produced and offered in evidence, the instrument in question, accompanied by the testimony of Robert Moore, as was given in the case at bar, showing that the transaction was purely a partnership one and entirely for its benefit; that it was agreed between all the members of the firm that the mortgage should be given in the firm name on the partnership property; that in pursuance of said agreement the mortgage was given, and that the same was signed by him in his individual name, instead of that of the firm, simply through mis-

take, and there was not a particle of evidence to the contrary. What chancellor on earth would have refused a decree?

How does the bankruptcy of Moore & Sons affect the case in this particular? Not at all. The assignees have no other or greater rights than their assignors.

Tebb v. *Hodge*, L. R. 5 Com. Pleas, 73, was a case of this kind.

The plaintiff agreed to let one B. premises in Holbern, which B. was to fit up forthwith as a luncheon bar and restaurant, such fittings to be of the value of £500, and to the plaintiff's satisfaction, and B. was to pay a premium of £1,000, upon payment of which the premises being fitted up as aforesaid, the plaintiff was to grant B., and B. agreed to take, a lease for twenty-one years; and the plaintiff agreed further to lend or obtain for B., upon security of the said premises as fitted up and licensed, £1,000 for two years at five per cent. Before any lease was granted or money paid, B. became a bankrupt, and his assignees seized and sold the fittings and fixtures under an order of the court.

"Held (affirming the judgment of the Court of Common Pleas), that until the execution of the proposed lease, the agreement constituted an equitable contract between the plaintiff and B.; that the premises as fitted and licensed should stand as a security for the £1,000 pre-

mium, *and, consequently, that plaintiff was entitled to them as equitable mortgagee.*"

Webster et als. v. *Harris et als.*, 16 Ohio, *supra*, was a case of a deed under seal executed by an attorney in his own name, though the manifest intention was otherwise. Chief Justice Burchard uses the following language in delivering the opinion of the Court: "It matters little what was the form of the contract when the intention of the parties was palpable, and a full consideration has been paid and received. It would be a reproach to a court of equity, could it be said that in such a case mere form must work a denial of justice. Whatever it might be at law, this contract with Johnston was in equity the contract of Moses, not Payne Cleveland, and for the simple reason that both intended that it should be so. That was what they designed, and the accidental circumstance of affixing a seal to the signature of Payne will not be allowed in this Court to make it otherwise. We look to a result that will be consistent with the ends of justice, and where the way to attain it is so manifest, shall not be turned out of it, unless the well-settled rules of law present insuperable obstacles. No well-settled rule or well-considered adjudication will be contravened by rejecting the seal and reforming this contract, so as to make it effect the objects of the contracting parties. The omission to sign, as the attorney of Moses, and the affixing a seal, were accidental circumstances, which originated in un-

skillfulness, ignorance, or mistake, and ought not to defeat an agreement which all parties for many years treated as obligatory, which on one part was fully executed, and upon the other was thirty years without disaffirmance."

Every equity that arises in the transaction is with Gibson. He loaned his credit for the use of the partnership of Robert Moore & Sons, on the faith of the security of the mortgage that he then received. None of the general creditors are affected injuriously thereby, as Moore & Sons were their debtors in every instance prior to the date of the instrument. The money arising from the discount of the note was used in the business of the firm, and thereby added to the assets of the concern, and Gibson expressly refused to indorse the note unless he was secured by the mortgage.

Whilst it is undoubtedly true that in Ohio an equitable mortgage of real estate has no force or effect as against subsequent creditors, even with notice of its existence, and though good as between mortgagor and mortgagee, it has no validity as between the assignee of the mortgagor and the mortgagee, yet the reverse is the law of that State as regards chattel mortgages.

Paine & Kendall v. *Mason*, 7 Ohio St. 199.
Day v. *Munson*, 12 Ohio St. 488.

The distinction seems to be clearly drawn in Ohio that in mortgages of real property the requirements of the

statute must be strictly complied with, as to the record and execution in due form of law of the instrument, in order to charge third parties with notice, and that an equitable mortgage to them has no force or validity, but in cases of mortgages in equity of personal property, the rule is precisely the same in Ohio as in all other States, and an instrument which is an equitable mortgage is entitled to all respect.

II.

Is the Mortgage Void or Voidable under the Provisions of the Bankruptcy Act?

Although Mr. Justice Swayne did not consider this question, as it may present itself to the mind of the Court, we propose to briefly discuss it.

The instrument bears date March 8, 1868, and the testimony shows conclusively, we think, that it was executed and delivered on that day. It was placed on record upon the 18th day of that month, at 12 o'clock M., as is shown beyond cavil by the certificate of Thomas L. Young, Recorder of Hamilton county (Record, p. 46). The mortgage of Gaylord, Son & Co. was placed on record the same day, at 5 o'clock P. M., some five hours

later. On the 15th day of September, of the same year, a petition in involuntary bankruptcy against Robert Moore & Sons was filed in the District Court, upon which, afterward, they were adjudicated bankrupts. More than four months had elapsed from both the date and recording of the mortgage to Gibson before the filing of the petition, and more than six months from the date of the instrument, but not quite that length of time from the date of its record.

Gibson being under a liability for Robert Moore & Sons, as indorser upon the note described in the chattel mortgage, which he subsequently actually paid, we claim that unless the petition in bankruptcy was filed within four months from the date of the recording of the instrument, that its validity can not be questioned under the bankruptcy act.

The 35th section of that act provides that "if any person being insolvent, or in contemplation of insolvency, within four months before the filing of the petition by or against him, with a view to give a preference to any creditor or person having a claim against, or who is under any liability for him, procures any part of his property to be attached, sequestered, or seized on execution, or makes any payment, pledge, assignment, transfer, or conveyance of any part of his property, either directly or indirectly, absolutely or conditionally, the person receiving such payment, assignment, transfer, or conveyance, or to be bene-

fited thereby or by such attachment, having reasonable cause to believe such person is insolvent, and that such attachment, payment, pledge, assignment, or conveyance is made in fraud of the provisions of this act, the same shall be void, and the assignee may recover the property, or the value of it, from the person so receiving it, or so to be benefited.

"And if any person being insolvent, or in contemplation of insolvency or bankruptcy, within six months before the filing of the petition by or against him, makes any payment, sale, assignment, transfer, conveyance, or other disposition of any part of his property to any person who then has reasonable cause to believe him to be insolvent, or to be acting in contemplation of insolvency, and that such payment, sale, assignment, transfer, or other conveyance is made with a view to prevent his property from coming to his assignee in bankruptcy, or to prevent the same from being distributed under this act, or defeat the object of, or in any way impair, hinder, impede, or delay the operation and effect of, or to evade any of the provisions of the act, this sale, assignment, transfer, or conveyance shall be void, and the assignee may recover the property, or the value thereof, as assets of the bankrupt."

It must be confessed that the meaning of the two subdivisions of the section in question, is not quite as clear as it might be, but in the case of *Bean* v. *Brookmire*,

10 Am. L. Reg., N. S. 181 (March Number, 1871), the language used has received a judicial interpretation. That was a case in which the plaintiff in error brought his suit to recover as assignee of the bankrupt, a sum paid to the defendants within six months, but not within four months before the filing of the petition under which the bankruptcy was established. The defendant was a creditor of the bankrupt at the time of the alleged preference, and filed a demurrer to the declaration of plaintiff, which contained two counts, in both of which the insolvency of the bankrupt at the time of the transaction was alleged, and knowledge of said facts upon the part of the defendants, and that it was within six months of the filing of the petition in bankruptcy.

The demurrer was sustained in the District Court and the case coming up on error in the Circuit Court, District of Missouri, Mr. Justice Miller of this Court sitting as circuit judge, in announcing the opinion of the Court, affirming the decision of the Court below, said: "And we commence the examination into the true meaning of the section, in its application to the question before us, by affirming what I am told was held in this same Court at the last term, namely, that the two clauses differ mainly in their application to two different classes of recipients of the bankrupt's property or means. That is to say, that the *first clause is limited to a creditor, a person having a claim against the bankrupt, or who is under any liability for him*, and

who receives money or property by way of preference; *and the second clause applies to the purchase of property of the bankrnpt by any person who has no claim against him, and is under no liability for him.*

"That the first clause is confined to persons of that character named, can not well be doubted, since the acts therein mentioned are acts done with persons of that character, and must be done with a view to giving such a person a preference over others of the same class. That the second clause has reference to another class of persons and is governed by other rules, seems to be strongly sustained by these considerations: 1. The sale or other transfer of property mentioned in it, need not be in *preference* of a creditor or person liable for the bankrupt, to render it void. 2. It need not be made to a person of that character. 3. In the first clause the transfer may still be valid, although within all other conditions of the clause, if made more than *four* months before the filing of a petition in bankruptcy, while the transfer described in the second clause requires that it shall have been made more than *six* months before the filing of the petition to have the same effect.

"These are sufficient reasons to justify our conviction that the two clauses apply to transfers to two different classes of persons dealing with the bankrupt."

After the lapse of four months, whether the bankruptcy be voluntary or involuntary, the preferences which

an insolvent debtor may have made, so far as the preferred creditor is concerned, are valid as against all the world and can not be questioned.

Bump on Bankruptcy (3d edition), 401.
Potter et al. v. *Coggeshall*, 4 B. R. 19.
In re Wynne, 4 B. R. 5.
In re Fuller, 4 B. R. 29.
Bean v. *Brookmire*, *supra.*

But if the limitation applicable to the case at bar be six months, as more than that period had elapsed between the date and delivery of the mortgage and the filing of the petition in bankruptcy, we claim that its validity can not be questioned under the bankruptcy act.

It is true that the instrument was not recorded within the period specified, but this in no wise affected its character. No one could take advantage of this save subsequent creditors, and the record in this case discloses that there are no creditors of that character complaining.

As between the mortgagor and mortgagee the instrument became binding and in full force the instant of its execution and delivery.

In re Wynnes, *supra*, Mr. Chief Justice Chase held:

"A deed of trust executed prior to but recorded within the period of four months before the commencement of proceedings in bankruptcy, is valid. Although it did not take effect until the time of record as against creditors, it is not for that reason void. The recording

of the deed was not the act of the bankrupt. The deed, as against him, was operative from its date. It was then that all his interest in the property described in it became vested by way of security in the grantee. It was then that he delivered the deed and parted with all control of it. If the beneficiary was satisfied with the security afforded by the deed unrecorded, there was neither necessity nor obligation to record it. To record it was only necessary to make it a valid security against other creditors; and it was not for the bankrupt, but for the creditors secured, to determine whether it should be recorded or not. The delivery of it for record was, in no sense, his act, but theirs. The preference which the law condemns is a preference made within the limited time by the bankrupt, and not a priority lawfully gained by a creditor; and the preference gained by the record was not a preference made by the bankrupt. Moreover, the law which makes deeds of trust void 'until and except from' the time of record, clearly makes them valid from that time."

But admitting that appellees are within the time limited by either provision of the 35th section of the bankruptcy act, the oral testimony set forth in the record conclusively negatives the idea that Gibson either knew or "had reasonable cause to believe" that Robert Moore & Sons were insolvent. The *onus probandi* was upon appellees so to show, and unless they have succeeded in so doing, they must fail in their attempt to attack the validity of the instrument in question.

Had Gibson such knowledge? He testifies (Record, p. 34): "I believed them, Robert Moore & Sons, to be perfectly sound. I would not have indorsed it if I had known them to be insolvent. * * * * The chattel mortgage was given in consideration of the indorsement, and I insisted on its being given before I would indorse the note."

On the other hand it may be claimed that the indorsement of Gibson was simply for the purpose of renewing a previous obligation for a like amount. Admitting that it was, Frederick Moore, the financial man of the concern, testified (Record, p. 36), when examined in this connection: "The old note would have been taken up at the time of its maturity, if we had not had Gibson's indorsement. None of us considered ourselves insolvent at the time the old note was paid."

Now it must be borne in mind that the testimony above recited stands uncontradicted. What showing, then, has there been made that Gibson "had reasonable cause to believe" that Robert Moore & Sons were insolvent? Simply none. As a question of fact then, appellees must fail.

In conclusion, we claim that we have conclusively shown that the decree entered herein was erroneous, and that the judgment should be reversed.

Geo. HOADLY & Edgar M. JOHNSON,

Atty's for David Gibson.

7 N H	475 —
6 Conn	469
98 Mass	54
	45 —
30 Cal	206
12 N H	103
5 Law Rep	491
1 Ohio	223
1 Ohio	
" "	1 — 13
1 Pet	

Robert Clarke & Co., Printers, 65 West Fourth Street, Cincinnati, Ohio.

Supreme Court of the United States.

Americus Warden and Augustus S. Ludlow.

299.) *vs.*

Gaylord, Son & Co. et al.,
Appellants,

BRIEF FOR GAYLORD, SON & CO., Appellants,

BY PERRY & JENNEY.

Robert Clarke & Co., Printers, 65 West Fourth Street, Cincinnati, Ohio.

Supreme Court of the United States.

Americus Warden and Augustus S. Ludlow.

299.) *vs.*

Gaylord, Son & Co. et al.,
Appellants,

Appeal from the Circuit Court of United States for the Southern District of Ohio.

ABSTRACT OF PLEADINGS.

1 BILL IN CHANCERY, Filed December 21, 1868.

Plaintiffs—Americus Warden and Augustus S. Ludlow, residents of Cincinnati, Ohio.

Defendants—Thomas G. Gaylord, Benjamin B. Gaylord, Jared B. Green, Charles S. Green, all of said district; William Elden, of Kentucky; William Colcord, of Missouri, partners, firm Gaylord, Son & Co; David

Gibson, Charles L. Gano, and Jane, his wife; Daniel W. Woodmansee and Mary, his wife; Chester M. Poor and Louisa H. Poor, his wife; Charles G. King, William D. King, Annie M. King, infants, and Daniel W. Woodmansee, their guardian, all of said district; James W. K. Lemon, and Alice M., his wife, of Indiana; Charles L. Gano, Charles Harkness, Thomas L. King, executors of Anthony Harkness; Mary Harkness, Thomas Dodsworth, Hezekiah Kierstead, Louis Hoffman, partners, firm of Kierstead & Hoffman, all of said district; Wm. Spiegel, of Kentucky, Thomas McIlvain, of said district, partners as McIlvain & Spiegel; Thomas Phillips, of said district, and George Phillips, of Kentucky, partners as Phillips & Son; William Means, Thomas W. Means, John Kyle, George Slimer, R. D. Simms, Mrs. S. B. Hempstead, of said district, and John Means, of Kentucky, partners, as Means, Kyle & Co.

LEASE.

The bill after alleging names and residence of parties, sets forth a lease and the terms of it from Anthony Harkness to Robert Moore and John G. Richardson, partners; and an assignment by Richardson of his interest to Moore; date of lease, January 31, 1852; term, twenty years; premises the same occupied by Robert Moore & Sons at the time of their bankruptcy. The covenants,

rents, and terms of lease not necessary to be stated for any purpose of this appeal.

FIRM OF MOORE & SONS.

That after Richardson assigned his interest in the lease to Moore, on February 13, 1865, Robert Moore associated with him his sons, Arthur G., Hamilton, Frederick R. and Augustus Moore, as partners under firm name of Robert Moore & Sons, and carried on the business of manufacturing locomotives, and other engines and heavy machinery, until March 21, 1868, when they assigned all their assets for the benefit of creditors.

MORTGAGE TO DAVID GIBSON.

That on March 8, 1868, Robt. Moore & Sons mortgaged, or attempted to mortgage, in writing to David Gibson and his assigns, "all the machinery, engines, boilers, machine tools, line shafting, patterns, and all office furniture," owned and used by mortgagors in their establshment located on the ground covered by the lease, to secure a note for $6,000, made by Robert Moore & Sons to the order of David Gibson, payable sixty days after the date last mentioned. That the mortgage was filed by said Gibson in the office of the recorder of Hamilton county, Ohio, at 12 o'clock M. on the 18th March, 1868.

MORTGAGE TO GAYLORD, SON & CO.

That on or about March 17, 1868, said Robert Moore & Sons mortgaged, or attempted to mortgage, in writing to Gaylord, Son & Co., "all their machinery, engines, boilers, machine tools, line shafting, patterns, and office furniture," as before, to secure mortgagees from loss by indorsing the note or notes of said Robert Moore & Sons, to the amount stated in the mortgage as $17,400, which mortgage was filed in the office of the recorder of said county, on March 18, 1868, at 25 minutes past 5 o'clock P. M.

ASSIGNMENT OF ROBERT MOORE & SONS.

That on March 21, 1868, Robert Moore & Sons were still in possession of the property described in the two chattel mortgages; and by deed of assignment, reciting indebtedness to various persons which they were at that time unable to pay, assigned to Augustus S. Ludlow and Americus Warden, all their property and choses, not exempt from execution, in trust for the general benefit of creditors, which deed was duly acknowledged and recorded in said county.

ASSIGNEES TOOK POSSESSION.

That the greater part of the property assigned was in, about, and upon the leasehold before mentioned, held

by said Robert Moore, and said assignees did in pursuance of the trusts of the deed "enter upon said premises, and take possession of the goods, chattels, and property assigned, including the goods and chattels covered by the two chattel mortgages, consisting for the greater part of tools, boilers, engines, lathes, cranes, patterns, and other ponderous and bulky machinery and apparatus," for carrying on their said business, and of a large quantity of scrap iron. That the leasehold was never assigned to Robert Moore & Co., nor to said assignees, but up to September 15, 1868, was the exclusive property of Robert Moore. There are allegations affecting the question whether assignees made themselves liable for rent, which have no bearing on this appeal.

PETITION IN BANKRUPTCY.

That numerous parties, naming them, and setting forth their asserted legal character, represented the estate of said Anthony Harkness, deceased, claiming to be entitled to recover rents on said leasehold to the amount of $9,000 from Robert Moore & Sons, and claiming that the before-mentioned assignment and mortgages were acts of bankruptcy on the part of Robert Moore & Sons; had filed their petition for a decree and proceedings of involuntary bankruptcy against Robert Moore & Sons in the District Court for the Southern District of Ohio, on September 15, 1868.

DECREE OF BANKRUPTCY.

That such proceedings were had on said petition, that said Robert Moore & Sons [naming each member of the firm] were adjudged bankrupts.

ASSIGNEES APPOINTED.

That thereupon such proceedings were had, that Americus Warden and Augustus S. Ludlow were, at a meeting of creditors, unanimously chosen assignees, in pursuance of the bankrupt law; that within five days after being so chosen, they had accepted in writing the trust as such assignees, had given bond, and were qualified, and received from the Register a conveyance of "all the estate, real and personal, of the bankrupts aforesaid," and, thereupon, became vested, etc.; but have not yet accepted the leasehold, which they are of opinion may be of no value. Orators admit that the representatives of Harkness, naming them, are entitled to a lien on the leasehold estate for rents, and may enter and avoid the lease.

AMOUNT OF ASSETS AND LIABILITIES.

That assignees have received, in cash, $16,676.70 and the remainder of the property, when converted, will not increase the aggregate to a sum greater in all than $20,000. That $17,300.05 will have resulted from the sale of the chattels covered by the two chattel mortgages.

That the liabilities of the firm of Robert Moore & Sons amount to $80,126.58; that the total amount of cash proceeds of said estate will not be sufficient to discharge the liabilities.

CREDITORS.

That several defendants, naming them, are general creditors of Robert Moore & Sons, and neither have nor claim any lien or preference over other creditors; that the general creditors are very numerous, and can not without great inconvenience and delay be made parties; that the defendants in the case represent all the adverse interests in this suit.

CONFLICTING CLAIMS.

That creditors who have no mortgages deny the validity of the pretended chattel mortgages before described; that the mortgagees in said mortgages claim priority of lien; also, that the mortgage creditors deny the efficacy of the proceedings in bankruptcy to transfer the distribution of the trust fund from the State Court to the District Court; that the executors of Harkness claim that assignees are liable for rent on said lease, while creditors deny such liabilities.

INTERROGATORIES

Numbered from 1 to 16, both inclusive, and covering the main allegations of the bill, are inserted, but not necessary to be considered in this appeal.

PRAYER.

That defendants may be compelled to interplead and settle and adjust their claims; for the aid and direction of the Court in the execution of the trusts of said assignment; for other and further relief, and for subpœnas. Jurat—none.

II.—ANSWER OF CHARLES L. GANO, AND JANE, HIS WIFE.

Relates in greater part to rents under the Harkness lease, claiming therefor a first lien on the assets, and claiming that the assignees had taken possession of the leasehold, and are liable. No part of this feature of the case being involved in the appeal, it is omitted from the abstract.

MORTGAGES.

The answer then denies the validity of the chattel mortgages to David Gibson, and to Gaylord, Son & Co., and "avers that neither of said pretended mortgages was executed or filed in lawful manner and form;" asserts that they were given by Robert Moore & Sons "within six months before the filing of the petition" in bankruptcy; that at the time the mortgages were made, Robert Moore & Sons were "wholly insolvent, and intended thereby to defeat, impair, or evade" the bankrupt act. That said David Gibson, and Gaylord, Son & Co., respectively,

had reasonable cause to believe that "they" were insolvent then, or "to be" acting in contemplation of insolvency, and that said pretended mortgages, and each of them, were given with a view to prevent other creditors of said Robert Moore & Sons from being paid or secured equally with said mortgages, and with a view to defeat, impair, hinder or evade the provisions and object of the bankrupt act.

Admits the assignment of March 21, 1868, and claims it to have been an act of bankruptcy.

Other parts of answer not pertinent to this appeal.

PRAYER.

Among other things, that the answer be taken as a cross-bill against the plaintiffs and all their co-defendants; "that the said pretended mortgages to the said David Gibson, and Gaylord, Son & Co., be declared to be of no force and effect;" that plaintiff's account, etc., etc., and other and further relief. Jurat by Gano.

III.—ANSWER AND CROSS-BILL OF D. W. WOODMANSEE ET AL.

Relates in greater part to the lease and rents, not relevant to this appeal; denies the validity of the chattel mortgages, and repeats the same allegations in regard to them in all respects, which are made in the answer and cross-bill of Gano and wife. Also, the same allegations in regard to assignment of March 21, 1868, and makes

the same prayer. Jurat by Chester M. Poor, one of defendants.

IV.—ANSWER AND CROSS-BILL OF GAYLORD, SON & CO.

Reserves exceptions to the bill; alleges that Robert Moore & Sons [naming the individuals] were, on the 23d day of January, 1868, in good credit, and believed by Gaylord, Son & Co. to be solvent, with ample means to pay the debts of the firm. That on said date, Robert Moore & Sons, representing their firm to be amply solvent and able to pay their debts, desired, for business purposes, the indorsement of Gaylord, Son & Co., to an extent not to exceed $20,000, which they represented sufficient to accomplish the purposes they had in view without embarrassment; and proposed to secure Gaylord, Son & Co. for such indorsements by a chattel mortgage on their establishment. Gaylord, Son & Co. entered into the proposed arrangement with no doubt of the pecuniary soundness of Robert Moore & Sons, and with no motive except to accommodate them, unless the indirect motive of securing for Gaylord, Son & Co. the good will and business custom of Robert Moore & Co. as good and profitable customers.

INDORSEMENTS.

That in pursuance of the arrangement, Gaylord, Son & Co. indorsed for Robert Moore & Sons, on January 23, 1868, a note for $5,000, payable in ninety days; on

February 5, 1868, a note for $2,000, payable in sixty days; on March 9, 1868, a note for $400, payable in sixty days; and on March 17, 1868, a note for $10,000, due in sixty days, all of which they have since been compelled to pay, in amount $17,400.

FIRST MORTGAGE.

That, in pursuance of the arrangement, Robert Moore & Sons, on or about January 27, 1868, made a chattel mortgage, covering their said establishment, to Gaylord, Son & Co., to secure their indorsements; but Gaylord, Son & Co. did not take steps to record it until on or about March 17, 1868, when, preparatory to filing, they submitted it to the opinion of an attorney, who took some exceptions to it as drawn, on grounds never fully understood by Gaylord, Son & Co., and recommended its surrender, and the execution of a new mortgage.

SECOND MORTGAGE.

That Gaylord, Son & Co., not aware of the risks of so doing, surrendered the first mortgage and took a new one, which they filed in the office of the Recorder of the County on the 18th day of March, 1868, at 5.25 o'clock P. M. of that day, which is the mortgage they now claim under, and is exhibited by copy, marked A. (Record, pp. 22, 23.)

That, at the time of the surrender of the first mort-

gage and making the new one, Gaylord, Son & Co. indorsed the promissory note for $10,000 described above.

That Gaylord, Son & Co. accepted the second mortgage in good faith, and not with any purpose or in any manner forbidden by the bankrupt act, or in fraud thereof; and claim a first lien for the amount due them, stating the several notes before described.

GIBSON MORTGAGE.

Gaylord, Son & Co. deny notice of the Gibson mortgage when they surrendered their first and took their second mortgage; have no knowledge, information or belief in regard to the circumstances under which the Gibson mortgage was made; do not admit the allegations, but require proof.

ADMISSIONS.

That with exceptions and qualifications above stated, Gaylord, Son & Co. answer the interrogations of the bill in the affirmative.

PRAYER.

That the answer be taken as a cross-bill against the plaintiffs and co-defendants; that the chattel mortgage to Gaylord, Son & Co. be declared a valid and subsisting lien upon the property covered by it; that the proceeds be paid to Gaylord, Son & Co.; and for other and further relief. Jurat by William Elden, one of the defendants.

Note.—Exhibit A to the deposition of G. B. Bradley (Record, pp. 51, 52) is a copy of the first mortgage.

V.—ANSWER AND CROSS-BILL OF MARY HARKNESS.

Denies the validity of the chattel mortgages to David Gibson and Gaylord, Son & Co. in the same language and with the same allegations as in the answers of Woodmansee et al. and of Gano and wife, with the same prayer. There are other matters in this answer irrelevant to this appeal. Jurat by Robert P. Harkness, agent.

VI.—ANSWER OF DAVID GIBSON.

Reserving exceptions to the bill, alleges that, on or about March 8, 1868, the firm of Robert Moore & Sons, naming the individuals, were conducting the establishment mentioned in the bill; were in good credit and repute; and believed by him (Gibson) to be entirely solvent and possessed of ample means to pay all their debts and liabilities, and they so represented themselves to him. That on said date he indorsed the note for $6,000 described in his mortgage, for their accommodation, and at the same time they gave him their chattel mortgage "covering the machinery, engines, boilers, machine tools, line-shafting, patterns, and all office furniture owned and used" by them in their establishment. That on March, 18, 1868, at 12 M., said chattel mortgage was filed in the

Recorder's office of Hamilton County. The mortgage is exhibited by copy, marked A, and appears in full in the Record, pp. 28, 29.

That the note was negotiated by Robert Moore & Sons, was not paid by them, and Gibson was compelled to pay it. He asserts his right to a lien under said mortgage on the property covered by it. Denies knowledge, information, or belief as to other allegations in the bill.

PRAYER.

That his answer be taken as a cross-bill; that his chattel mortgage be decreed valid; that the proceeds of the property be applied to pay him; and for other and further relief. Jurat by David Gibson.

VII.

Gaylord, Son & Co. file their answer to the cross-bill of Charles L. Gano and Jane, his wife, denying all the allegations therein except as explained and admitted in the answer and cross-bill of Gaylord, Son & Co., before filed.

VIII.

Gaylord, Son & Co. answer in same way the cross-bill of D. W. Woodmansee et al.

IX.

And in the same way the cross-bill of Mary Harkness.

X.—THE DECREE

In full, Record, pp. 30, 31. Passage complained of as erroneous, p. 31:

"The Court further finds that the defendants, Thomas G. Gaylord, Benjamin B. Gaylord, Jared B. Green, Charles S. Green, William Elden, and William Colcord, partners under the name and firm of Gaylord, Son & Co., are not entitled to the relief by them sought, and that their alleged mortgage is invalid and secures to them no priority or right whatever, but that said defendants stand, with reference to the fund named in the bill, simply on the footing of general creditors."

ABSTRACT OF EVIDENCE.

No questions are involved in the appeal, either of law or fact, except as to the validity and priority of the chattel mortgage from Robert Moore & Sons to Gaylord, Son & Co., and the paper signed by Robert Moore, claimed by David Gibson to be a mortgage of the firm of Robert Moore & Sons to him. Only such evidence as may be relevant to these mortgages will, therefore, be ab-

stracted. The assignees do not question the validity of either of said mortgages, except as they state the existence of conflicting claims among creditors, in regard to them, call for a settlement between these conflicting claims, and ask the advice of thc Court.

None of the petitions require answers under oath.

The testimony on this point is condensed in the record so as not to admit of further abbreviation. It consists of the testimony of Robert Moore, Printed Record, pp. 33, 34; of David Gibson, p. 34; of C. M. Poor, p. 35; of A. Ludlow, p. 35; of Frederick Moore, p. 35, 36; of D. Henderson, p. 36; of David Gibson, recalled, p. 36; ledger, journal, day-book, cash-book, and bill-books of Robert Moore & Sons, p. 37; David Gibson note and chattel mortgage, pp. 44, 45, 46; the deposition of George B. Bradley, pp. 47 to 56, both inclusive; the deposition of Thomas G. Gaylord, pp. 56 to 59, both inclusive. Of all which the foliowing seems to be the sum or

RESULT.

Gaylord, Son & Co., believing Robert Moore & Sons solvent and sound, indorsed for them $10,000 as early as May 8, 1867 (Printed Record, p. 55), which was repeated from time to time (Printed Record, p. 37). About the 21st or 22d of January, 1868, Frederick Moore, for Robert Moore & Co., applied to Gaylord,

Son & Co. for a definite arrangement for indorsements to the extent of $20,000, to be secured by a chattel mortgage; representing themselves as solvent, and with that line of indorsements able to meet all their liabilities, preserve a fine credit, and prosecute successfully a large business. Special inquiries were directed by Gaylord, Son & Co., as to the standing and condition of Robert Moore & Sons, before an answer was given. The inquiry was made and with satisfactory results.

Gaylord, Son & Co. agreed to indorse to the extent of $15,000, with a possibility of indorsing for $20,000, and Robert Moore & Sons agreed to secure them by a chattel mortgage on their establishment. (Gaylord, pp. 57, 58; Bradley, 47 to 56.) In pursuance of this arrangement Gaylord, Son & Co., on the 23d day of January, 1868, indorsed a note for $5,000 (Printed Record, p. 53), and afterward made other indorsements, amounting in all to $17,400. The first mortgage was made January 27, 1868, was delivered at that time (Printed Record, 58, 48), and locked up in the safe of Gaylord, Son & Co. It does not appear to have been any part of the bargain that the mortgage should not be filed in the recorder's office; but when it was delivered to Gaylord he told Moore he would not file it (58). The Moores afterward, probably in March, 1868, pressed for a further indorsement for $5,000, which Gaylord declined. Shortly after

this the Moore's notified him of expected judgments, but assured him of their ability to pay all their debts (49, 58). Preparatory to filing the mortgage it was shown to an attorney, who advised a surrender of the old mortgage and the execution of a new one. The new one was drawn on the 17th March, 1868, and was executed and filed, March 18, 1868, at 5.25 o'clock P. M. Gaylord, Son & Co. at the time, and as part of the same transaction, surrendered the first mortgage and indorsed for $10,000 in renewal.

David Gibson had been endorsing for Robert Moore & Sons to the extent of $6,000 [34], since July 11, 1867, [37], believing them to be "perfectly sound," but there had been no agreement that he should indorse. On March 8, 1868, he indorsed for the same amount, but insisted upon the condition that he should have a chattel mortgage [34], which was given at that date or some days after. Gibson had no idea when he took the mortgage that Robert Moore & Sons were insolvent [36], but there were reports flying about many parties failing, and he wanted to be secured [34]. Can not say why he did not file the mortgage on the day it was given. Can not say he had any conversation with either of the Moores before he filed it; but if he had, it was with Fred. Moore. He was not notified by either of the Moores to put the mortgage on record [34]. Fred. Moore never had a conversa-

tion with David Gibson as to his mortgage, or in regard to the position of the firm, but went to him for his indorsement, which he gave for accommodation [35]. A. Ludlow drafted the mortgage; executed the day of its date, Gibson not present [35]. Henderson, notary, went with A. S. Ludlow, who took the mortgage with him, to Gibson's office, on March 18, 1868, and there took the affidavit of Gibson to it. Gibson thinks it probable that he made the affidavit at his office on the day the mortgage was given to him [34]. The mortgage was filed in the recorders office, March 18, 1868, at 12 o'clock M. [46.]

It does not appear to have been known to Gibson or to Gaylord, Son & Co.; but the evidence discloses that Robert Moore & Sons, though not regarding themselves insolvent as late as March 8, 1868 [36], or even as late as March 18 [49], had long been behind in their expense account [42, 43, 44]. Not behind at bank but with some of their hands [34]. Having failed in an effort with Harkness' heirs to obtain some indulgence [34, 35], they made an assignment for the benefit of their creditors, on March 21, 1868 [4].

Proceedings against them in involuntary bankruptcy were commenced September 15, 1868.

David Gibson was compelled to pay the note he indorsed. Gaylord, Son & Co. were compelled to pay the notes they indorsed.

First Point

POINTS OF ARGUMENT FOR GAYLORD, SON & CO., APPELLANTS.

1. *Bona fide* chattel mortgages in Ohio, though leaving the possession of the property in the mortgagor, were valid even as against execution creditors and *bona fide* purchasers without notice, before the statute relating to chattel mortgages.

Hornbeck v. *Van Meter*, 9 Ohio R. 153.
Collins v. *Meyers*, 16 Ohio R. 552, 554.
Brown v. *Webb*, 20 Ohio R. 389.
Webb v. *Brown*, 3 Ohio St. 246.

2. The statute requiring such mortgages to be filed, does not make the filing a part of the execution of the instrument or necessary to its validity against the mortgagor, and against subsequent mortgagees and purchasers with notice.

See Statute, 1 S. & C. 475.
Wilson v. *Leslie*, 20 Ohio R. 161.
Sidle v. *Maxwell*, 4 Ohio St. 236.
Kendall & Co. v. *Mason*, 7 Ohio St. 198.
Gregory v. *Thomas*, 20 Wend. 17.
Day v. *Munson et al.*, 14 Ohio St. 488.
Seaman v. *Eager*, 16 Ohio St. 209.

3. The mortgage when filed gives a prior lien as against all creditors and others who had not by execution levied, attachment or otherwise before the filing, obtained a lien.

Webb v. *Brown*, 3 Ohio St. 253, 261, 265.
Swift v. *Holdridge*, 10 Ohio R. 232.
Wilson v. *Leslie*, 20 Ohio R. 166.
Hallowell v. *Bayless*, 10 Ohio St. 537.
Clarke v. *Schuyler*, 16 Ohio R. 322, 323.
Bare v. *Hatch*, 3 Ohio R. 530.
Freeman v. *Hewson*, 5 Ohio St. 1.

4. The mortgage to Gaylord, Son & Co., made on January 27, 1868, though not filed according to the statute, was valid as against everybody, in the condition of the liabilities as they stood from the time it was made to the filing of the second mortgage on March 18, 1868. If the first mortgage had been then filed, it would have held a prior lien against everybody, with the possible exception of David Gibson.

5. The new mortgage, executed and filed March 18 1868, was substituted for the other, and covered exactly the same property, with the exception of "stock in trade," omitted from the last mortgage, but included in the first. There was no provision in the first mortgage giving power

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5. The new mortgage, executed and filed March 18, 1868, was substituted for the other, and covered exactly the same property, with the exception of "stock in trade," omitted from the last mortgage, but included in the first. There was no provision in the first mortgage giving power

of sale to the mortgagor over the stock in trade, and there is no proof aliunde of an understanding that mortgagor retained the right to sell "stock in trade." But if such understanding had been shown, it would not invalidate the mortgage as to the property covered by the last mortgage.

6. The new mortgage was filed more than four months, and only three days less than six months before the petition in bankruptcy. It made no change in the situation as to the parties or creditors. No new consideration was necessary, but ample new consideration occurred in the surrender of the first mortgage, the indorsement for $10,000 given, and in forbearance.

7. The second mortgage is to be treated in law as if made when the agreement for it was made, preparatory to indorsement, viz: January 23, 1868, nearly nine months before the petition in bankruptcy.

vide *In re Colemere*, Br. L. R. 1 Ch. App. 128. – 131 –
Mercer v. *Peterson*, Br. L. R. 2 Exch. 304. vide
Hutton v. *Crutwell*, 17 Jur. 392; 72 Eng. Com. Law. 15.
Ex parte Tempest, Br. L. Rep. Eq. Pl. 1, January, 1871, p. 70.

1 Lush Law Bankruptcy 431

8. The transaction was not, either as to the first or second mortgage, in the sense of the bankrupt act, a voluntary preference or in violation of the act.

Authorities cited to last proposition, also:

Pennell v. *Reynolds*, 103 Eng. Com. Law, 708.
Yates v. *Haffe*, 9 C. B. 541; 67 Eng. Com. L. 540.
Bittlestone et al. v. *Cooke*, 6 E. & B. 296; 88 Eng. C. L. 296.
Green v. *White*, 3 Bing. N. C. 59.
Baxter v. *Pritchard*, 1 Ad. & E. 456.
Young v. *Mard*, 8 Ex. 221.
Thompson v. *Freeman*, 1 Term R. 156.
Smith v. *Payne*, 6 Term R. 152.

9. The six months clause of the 35th section of the bankrupt act does not apply to this class of cases. *Bean* v. *Brookmire*, Law Register, March, 1871, p. 181.

10. The mortgage to Gibson was not executed by Robert Moore & Sons, and was a voluntary preference contrary to the bankrupt act.

Aaron F. Perry